



# IOWA ADMINISTRATIVE BULLETIN

*Published Biweekly*

VOLUME XXXI  
December 3, 2008

NUMBER 12  
Pages 1343 to 1408

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## PREFACE

The Iowa Administrative Bulletin is published biweekly pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)“a”]; agricultural credit corporation maximum loan rates [535.12]; and regional banking—notice of application and hearing [524.1905(2)].

**PLEASE NOTE:** Underscore indicates new material added to existing rules; ~~strike through~~ indicates deleted material.

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## CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)“a”	(Paragraph)
441 IAC 79.1(1)“a”(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

NOTE: In accordance with Iowa Code section 7.17, a rule number within the Iowa Administrative Code includes a reference to the statute which the rule is intended to implement: 441—79.1(249A).

## Schedule for Rule Making 2009

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
<b>*Dec. 24 '08*</b>	Jan. 14 '09	Feb. 3 '09	Feb. 18 '09	Feb. 20 '09	Mar. 11 '09	Apr. 15 '09	July 13 '09
Jan. 9	Jan. 28	Feb. 17	Mar. 4	Mar. 6	Mar. 25	Apr. 29	July 27
Jan. 23	Feb. 11	Mar. 3	Mar. 18	Mar. 20	Apr. 8	May 13	Aug. 10
Feb. 6	Feb. 25	Mar. 17	Apr. 1	Apr. 3	Apr. 22	May 27	Aug. 24
Feb. 20	Mar. 11	Mar. 31	Apr. 15	Apr. 17	May 6	June 10	Sep. 7
Mar. 6	Mar. 25	Apr. 14	Apr. 29	May 1	May 20	June 24	Sep. 21
Mar. 20	Apr. 8	Apr. 28	May 13	<b>***May 13***</b>	June 3	July 8	Oct. 5
Apr. 3	Apr. 22	May 12	May 27	May 29	June 17	July 22	Oct. 19
Apr. 17	May 6	May 26	June 10	June 12	July 1	Aug. 5	Nov. 2
May 1	May 20	June 9	June 24	<b>***June 24***</b>	July 15	Aug. 19	Nov. 16
<b>***May 13***</b>	June 3	June 23	July 8	July 10	July 29	Sep. 2	Nov. 30
May 29	June 17	July 7	July 22	July 24	Aug. 12	Sep. 16	Dec. 14
June 12	July 1	July 21	Aug. 5	Aug. 7	Aug. 26	Sep. 30	Dec. 28
<b>***June 24***</b>	July 15	Aug. 4	Aug. 19	<b>***Aug. 19***</b>	Sep. 9	Oct. 14	Jan. 11 '10
July 10	July 29	Aug. 18	Sep. 2	Sep. 4	Sep. 23	Oct. 28	Jan. 25 '10
July 24	Aug. 12	Sep. 1	Sep. 16	Sep. 18	Oct. 7	Nov. 11	Feb. 8 '10
Aug. 7	Aug. 26	Sep. 15	Sep. 30	Oct. 2	Oct. 21	Nov. 25	Feb. 22 '10
<b>***Aug. 19***</b>	Sep. 9	Sep. 29	Oct. 14	Oct. 16	Nov. 4	Dec. 9	Mar. 8 '10
Sep. 4	Sep. 23	Oct. 13	Oct. 28	<b>***Oct. 28***</b>	Nov. 18	Dec. 23	Mar. 22 '10
Sep. 18	Oct. 7	Oct. 27	Nov. 11	<b>***Nov. 12***</b>	Dec. 2	Jan. 6 '10	Apr. 5 '10
Oct. 2	Oct. 21	Nov. 10	Nov. 25	<b>***Nov. 25***</b>	Dec. 16	Jan. 20 '10	Apr. 19 '10
Oct. 16	Nov. 4	Nov. 24	Dec. 9	<b>***Dec. 9***</b>	Dec. 30	Feb. 3 '10	May 3 '10
<b>***Oct. 28***</b>	Nov. 18	Dec. 8	Dec. 23	<b>***Dec. 23***</b>	Jan. 13 '10	Feb. 17 '10	May 17 '10
<b>***Nov. 12***</b>	Dec. 2	Dec. 22	Jan. 6 '10	Jan. 8 '10	Jan. 27 '10	Mar. 3 '10	May 31 '10
<b>***Nov. 25***</b>	Dec. 16	Jan. 5 '10	Jan. 20 '10	Jan. 22 '10	Feb. 10 '10	Mar. 17 '10	June 14 '10
<b>***Dec. 9***</b>	Dec. 30	Jan. 19 '10	Feb. 3 '10	Feb. 5 '10	Feb. 24 '10	Mar. 31 '10	June 28 '10
<b>***Dec. 23***</b>	Jan. 13 '10	Feb. 2 '10	Feb. 17 '10	Feb. 19 '10	Mar. 10 '10	Apr. 14 '10	July 12 '10

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
14	Wednesday, December 10, 2008	December 31, 2008
15	Wednesday, December 24, 2008	January 14, 2009
16	Friday, January 9, 2009	January 28, 2009

**PLEASE NOTE:**

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

**\*\*\*Note change of filing deadline\*\*\***

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, December 9, 2008, at 9 a.m. and Wednesday, December 10, 2008, at 8:30 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

**Note: See also Agenda published in the November 19, 2008, Iowa Administrative Bulletin.**

#### **CORRECTIONS DEPARTMENT[201]**

Institutions and administration, amendments to ch 20 Filed **ARC 7398B** ..... 12/3/08

#### **ENVIRONMENTAL PROTECTION COMMISSION[567]**

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Emission standards—Brick and Boiler MACTs, 23.1(4)“dd” and “dj” Notice **ARC 7395B** ..... 12/3/08

Assessment policy and procedure for underground storage tank owners and operators, 135.2,  
135.8(1)“e,” 135.9(4)“f,” 135.10 Notice **ARC 7400B** ..... 12/3/08

#### **ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]**

Duplication of committee name, 4.2(2) Notice **ARC 7377B** ..... 12/3/08

Legitimate expenditures of campaign funds, 4.25(1)“e” Notice **ARC 7373B** ..... 12/3/08

Legitimate expenditures of campaign funds, 4.25(1)“t” Filed Without Notice **ARC 7376B** ..... 12/3/08

Corporate political activity—prohibited use of property, 4.44(4) Filed Without Notice **ARC 7379B** ..... 12/3/08

Payment of penalty for late-filed campaign report, 4.62(2) Notice **ARC 7380B** ..... 12/3/08

Executive branch ethics—definitions of “employee” and “official,” 6.2 Notice **ARC 7378B** ..... 12/3/08

Prohibition of sales to state agency in which employee or official serves or is employed, 6.10

Notice **ARC 7375B** ..... 12/3/08

Prohibition of campaign contributions by lobbyists during legislative session, 8.15 Notice **ARC 7374B** ..... 12/3/08

#### **HISTORICAL DIVISION[223]**

CULTURAL AFFAIRS DEPARTMENT[221]“umbrella”

Historical resource development program funding policies, 49.2, 49.3 Notice **ARC 7387B** ..... 12/3/08

#### **HUMAN SERVICES DEPARTMENT[441]**

Food assistance program administration, amendments to ch 65 Filed **ARC 7385B** ..... 12/3/08

Medical assistance for children in court-approved subsidized guardianship homes, 75.1(11),

75.57(6)“s” Filed **ARC 7386B** ..... 12/3/08

Medicaid for children with disabilities, 75.1(43) Filed Emergency After Notice **ARC 7388B** ..... 12/3/08

Case management services—compliance with federal regulations, amendments to chs 77, 78

Filed **ARC 7394B** ..... 12/3/08

Medicaid coverage of periodontal and endodontic dental services, 78.4

Filed Emergency After Notice **ARC 7396B** ..... 12/3/08

Foster care and adoption policies, 108.8(1)“c”(13), 113.4(1), 113.13, 113.17(1), 156.8(1),

156.11, 200.4(1)“b” Notice **ARC 7372B** ..... 12/3/08

Donation of funds to department; elimination of provider advisory committee, amendments

to ch 150 Filed **ARC 7397B** ..... 12/3/08

Family support subsidy, 184.9 Filed **ARC 7399B** ..... 12/3/08

#### **IOWA FINANCE AUTHORITY[265]**

Waiver of up-to-date title plant requirement, 9.7 Filed **ARC 7403B** ..... 12/3/08

First amended 2009 qualified allocation plan, 12.1 Notice of Termination **ARC 7402B** ..... 12/3/08

Trust fund allocation plan for project-based housing program, 19.1 Filed **ARC 7404B** ..... 12/3/08

#### **IOWA PUBLIC EMPLOYEES’ RETIREMENT SYSTEM[495]**

Covered wages; reemployment earnings limit, contributions and interest, 6.3, 12.8(4)“e”

Filed **ARC 7381B** ..... 12/3/08

#### **PROFESSIONAL LICENSURE DIVISION[645]**

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Board of barbering, rescind chs 20, 26; amend chs 21 to 25 Notice **ARC 7401B** ..... 12/3/08

#### **PUBLIC HEALTH DEPARTMENT[641]**

Immunizations, 7.1, 7.3, 7.4, 7.6 to 7.8, 7.11(4), 7.12 Filed **ARC 7389B** ..... 12/3/08

Water treatment systems, ch 14 Filed **ARC 7390B** ..... 12/3/08

EMS providers—inactive status, discipline, 131.4, 131.7 Filed **ARC 7391B** ..... 12/3/08

EMS—air medical services, driver training, employee termination, 132.1, 132.8 Filed **ARC 7392B** ..... 12/3/08

Smokefree air, ch 153 Filed **ARC 7393B** ..... 12/3/08

**REVENUE DEPARTMENT[701]**

Audit limitation for lawn care, landscaping and tree trimming and removal services, 12.10

Filed **ARC 7383B** ..... 12/3/08  
 Replacement tax and property tax exemptions, 70.12, 80.5, 80.26, 80.27 Filed **ARC 7382B** ..... 12/3/08  
 Web search portal business and its exemption, 230.11 Filed **ARC 7384B** ..... 12/3/08

**TREASURER OF STATE[781]**Fairgrounds infrastructure grant program, ch 20 Notice **ARC 7405B** ..... 12/3/08**ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS**

Regular, statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.

**EDITOR'S NOTE: Terms ending April 30, 2011.**

Senator Jeff Angelo  
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Senator Michael Connolly  
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 Coralville, Iowa 52241

Representative Linda Upmeyer  
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 Garner, Iowa 50438

Representative Philip Wise  
 503 Grand Avenue  
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**Administrative Rules Coordinator**  
 Governor's Ex Officio Representative  
 Capitol, Room 11  
 Des Moines, Iowa 50319  
 Telephone (515)281-0208

AGENCY	HEARING LOCATION	DATE AND TIME
<b>ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]</b>		
Waiver of wage and nonstatutory program requirements, 68.2(6), 68.4(7), 174.4, 175.4 IAB 11/5/08 <b>ARC 7315B</b> (See also <b>ARC 7316B</b> )	ICN/Main Conference Room 200 E. Grand Ave. Des Moines, Iowa	December 4, 2008 1:30 to 2:30 p.m.
<b>EDUCATIONAL EXAMINERS BOARD[282]</b>		
Substitute authorization—preschool special education, 14.143 IAB 10/8/08 <b>ARC 7329B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	December 3, 2008 1 p.m.
<b>ENVIRONMENTAL PROTECTION COMMISSION[567]</b>		
Air quality, 22.1(2), 22.8(1), 23.1 IAB 11/5/08 <b>ARC 7306B</b>	Conference Rooms, Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	December 8, 2008 1 p.m.
Emission standards—Brick and Boiler MACTs, 23.1(4)“dd,” “dj” IAB 12/3/08 <b>ARC 7395B</b>	Conference Rooms, Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	January 5, 2009 1 p.m.
Fee schedule—water use permit program, 50.4(2), 55.5(2) IAB 11/5/08 <b>ARC 7307B</b>	Kelly Hall, Onawa Community Center 320 10th St. Onawa, Iowa	December 3, 2008 9 a.m.
	Public Library 123 S. Linn St. Iowa City, Iowa	December 5, 2008 10 a.m.
	Auditorium, Wallace State Office Bldg. 502 E. 9th St. Des Moines, Iowa	December 11, 2008 10 a.m.
Iowa antidegradation implementation procedure, 61.2(2), 61.3 IAB 11/19/08 <b>ARC 7368B</b>	Fifth Floor Conference Rooms Wallace State Office Bldg. Des Moines, Iowa	December 12, 2008 1 p.m.
	Public Library 120 E. Main St. Washington, Iowa	December 15, 2008 10 a.m.
	Public Library 609 Cayuga St. Storm Lake, Iowa	December 17, 2008 10 a.m.
	Conference Room Atlantic Municipal Utilities 15 W. 3rd St. Atlantic, Iowa	December 17, 2008 6 p.m.
	Community Meeting Room 15 N. 6th St. Clear Lake, Iowa	December 18, 2008 1 p.m.
	Waitt Building Iowa Lakeside Laboratory Milford, Iowa	January 8, 2009 7 p.m.

AGENCY	HEARING LOCATION	DATE AND TIME
<b>ENVIRONMENTAL PROTECTION COMMISSION[567] (Cont'd)</b>		
	Public Library 304 Franklin St. Manchester, Iowa	January 14, 2009 10 a.m.
	Room 115, Suite 102 Northeast Iowa Community College 1220 3rd Ave. Waukon, Iowa	January 14, 2009 6 p.m.
	Film Room, Public Library 321 Main St. Davenport, Iowa	January 15, 2009 1 p.m.
Private sewage disposal systems, 64.15(4), ch 69 IAB 11/5/08 <b>ARC 7308B</b>	Room B, Public Library 123 S. Linn St. Iowa City, Iowa	December 3, 2008 1 to 3 p.m.
	Meeting Room, Public Library 424 Central Ave. Fort Dodge, Iowa	December 4, 2008 1 to 3 p.m.
Assessment policy and procedure for underground storage tank owners and operators, 135.2, 135.8(1)“e,” 135.9(4)“f,” 135.10 IAB 12/3/08 <b>ARC 7400B</b>	Fourth Floor Conference Rooms Wallace State Office Bldg. Des Moines, Iowa	January 6, 2009 1:30 p.m.
<b>HISTORICAL DIVISION[223]</b>		
Historical resource development program funding policies, 49.2, 49.3 IAB 12/3/08 <b>ARC 7387B</b>	Tone Board Room Historical Building 600 E. Locust St. Des Moines, Iowa	December 23, 2008 10 a.m.
<b>PROFESSIONAL LICENSURE DIVISION[645]</b>		
Respiratory care—fees, 5.17(1), 5.17(4) IAB 11/19/08 <b>ARC 7354B</b>	Fifth Floor Board Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	December 9, 2008 9 to 9:30 a.m.
Board of barbering, rescind chs 20, 26; amend chs 21 to 25 IAB 12/3/08 <b>ARC 7401B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	December 23, 2008 9 to 9:30 a.m.
<b>PUBLIC HEALTH DEPARTMENT[641]</b>		
Plumbing and mechanical systems licensure fees, ch 28 IAB 11/5/08 <b>ARC 7328B</b>	Public Library 2950 Learning Campus Dr. Bettendorf, Iowa	December 3, 2008 11 a.m. to 1 p.m.
	Room 517 & 518 Lucas State Office Bldg. Des Moines, Iowa	December 4, 2008 1 to 3 p.m.



AGENCY	HEARING LOCATION	DATE AND TIME
<b>PUBLIC HEALTH DEPARTMENT[641] (Cont'd)</b>		
Plumbing and mechanical systems professionals—application, licensure, and examination, ch 29 IAB 11/5/08 <b>ARC 7330B</b>	Public Library 2950 Learning Campus Dr. Bettendorf, Iowa	December 3, 2008 11 a.m. to 1 p.m.
	Room 517 & 518 Lucas State Office Bldg. Des Moines, Iowa	December 4, 2008 1 to 3 p.m.
<b>PUBLIC SAFETY DEPARTMENT[661]</b>		
Commercial explosive licensing, 5.7, 5.851, 5.865, 5.866; adopt ch 235 IAB 11/5/08 <b>ARC 7312B</b>	1st Floor Public Conference Room 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	December 9, 2008 8:30 a.m.
<b>TREASURER OF STATE[781]</b>		
Fairgrounds infrastructure grant program, ch 20 IAB 12/3/08 <b>ARC 7405B</b>	1st Floor Lucas Conference Room 148 Lucas State Office Bldg. Des Moines, Iowa	December 23, 2008 2 to 3:30 p.m.

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

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    Soil Conservation Division[27]  
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    Public Broadcasting Division[288]  
    School Budget Review Committee[289]  
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Community Action Agencies Division[427]  
Criminal and Juvenile Justice Planning Division[428]  
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**ARC 7395B****ENVIRONMENTAL PROTECTION COMMISSION[567]****Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 23, "Emission Standards for Contaminants," Iowa Administrative Code.

The purpose of the proposed rule making is to remove from the state air quality rules certain federal regulations that the United States Court of Appeals for the District of Columbia Circuit (the D.C. Court) recently vacated. The federal programs vacated by the D.C. Court that are addressed in this rule making are the National Emission Standards for Hazardous Air Pollutants (NESHAP) for industrial, commercial and institutional boilers and process heaters and the NESHAP for brick and structural clay products manufacturing.

Over the last year and a half, the D.C. Court has issued rulings on several significant federal regulations promulgated by the U.S. Environmental Protection Agency (EPA). The D.C. Court found the regulations to be unauthorized under the federal Clean Air Act (CAA) or otherwise deficient. Although the D.C. Court vacated the federal regulations, the regulations were adopted by reference and therefore are still in effect and enforceable by the Department. The vacatures of these federal programs have elicited uncertainty and confusion for regulated industries and for state and local air quality agencies. In response to these vacatures, the Department is proposing to remove the now vacated federal regulations that were adopted by reference.

Section 112 of the CAA as amended in 1990 requires EPA to develop a list of source categories or subcategories that emit or have the potential to emit hazardous air pollutants (HAP) and further requires EPA to issue regulations for these source categories or subcategories. Section 112 also requires certain subject sources to meet maximum achievable control technology (MACT) for controlling HAP.

EPA issues the MACT standards for listed source categories and subcategories under the NESHAP program. EPA promulgated the NESHAP with MACT standards for brick and structural clay products manufacturing (Brick MACT) on May 16, 2003. EPA promulgated the NESHAP with MACT standards for institutional, commercial and industrial boilers and process heaters (Boiler MACT) on September 13, 2004. The Brick MACT and the Boiler MACT are currently adopted by reference into the existing state air quality rules.

Section 112 includes provisions to require MACT for major sources of HAP emissions in the event that EPA does not issue MACT standards. Under Section 112(g), if EPA has not set applicable emission limits for a category of listed HAP sources, construction of a new major source or modification of an existing major source in the source category may not occur unless the Administrator (or delegated state or local agency) determines on a case-by-case basis that the unit will meet standards equivalent to MACT. Under Section 112(j), if EPA fails to promulgate a standard for a listed category or subcategory by the dates established in the CAA, states must conduct a case-by-case MACT determination for each subject source category or subcategory and include the MACT requirements in each facility's Title V Permit. EPA has delegated authority to the Department to implement and enforce both Sections 112(g) and 112(j) in Iowa.

The D.C. Court issued its decision to vacate the Brick MACT on March 13, 2007, and issued the mandate making the decision final and effective on June 18, 2007. EPA did not appeal the decision to the U.S. Supreme Court. The D.C. Court's decision is available online at <http://pacer.cadc.uscourts.gov/docs/common/opinions/200703/03-1202a.pdf>.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

The D.C. Court issued its decision to vacate the Boiler MACT on June 8, 2007, and issued the mandate making the decision final and effective on July 30, 2007. EPA did not appeal the decision to the U.S. Supreme Court. The D.C. Court's decision is available online at <http://pacer.cadc.uscourts.gov/docs/common/opinions/200706/04-1385a.pdf>.

Because of the D.C. Court vacatur, it now appears that Sections 112(g) and 112(j) apply to sources affected by the now vacated Boiler and Brick MACTs. Additionally, EPA has informally stated that it plans to repropose a Boiler MACT by July 31, 2009, and plans to repromulgate a final Boiler MACT standard by July 31, 2010.

At the Department's Air Quality Client Contact meeting on August 14, 2008, the Department discussed the implications of the Boiler MACT vacatur with stakeholders. At the meeting, the Department outlined a tentative, Section 112(j) time line for owners and operators of facilities with boilers and process heaters. The Department sent letters outlining the Department's plans to affected facilities on September 16, 2008.

Since only three brick and structural clay products manufacturing facilities exist in the state, the Department will be working with these facilities individually to develop the Section 112(j) requirements as needed.

During the rule-making process to remove the vacated federal regulations from state air quality rules, the Department will continue to closely monitor EPA and federal court actions, and, if needed, will alter its proposed rule-making and implementation strategies.

Item 1 amends paragraph 23.1(4)“dd,” which adopts by reference the federal provisions for the Boiler MACT. The amendment removes most of the explanatory text from the paragraph. The change is being made because the D.C. Court vacated the Boiler MACT. The amendment also includes a paragraph explaining the vacatur and indicating that the federal regulations under 40 CFR Part 63, Subpart DDDDD, are no longer adopted by reference. The paragraph is being preserved as a placeholder because EPA is required to repromulgate the Boiler MACT and may do so under the same federal subpart.

Item 2 amends paragraph 23.1(4)“dj,” which adopts by reference the federal provisions for the Brick MACT. The amendment removes most of the explanatory text from the paragraph. The change is being made because the D.C. Court vacated the Brick MACT. The amendment also includes a paragraph explaining the vacatur and indicating that the federal regulations under 40 CFR Part 63, Subpart JJJJJ, are no longer adopted by reference. The paragraph is being preserved as a placeholder because EPA is required to repromulgate the Brick MACT and may do so under the same federal subpart.

Any person may make written suggestions or comments on the proposed amendments on or before January 6, 2009. Written comments should be directed to Christine Paulson, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322, fax (515)242-5094, or by electronic mail to [christine.paulson@dnr.iowa.gov](mailto:christine.paulson@dnr.iowa.gov).

A public hearing will be held on Monday, January 5, 2009, at 1 p.m. in the conference rooms at the Department's Air Quality Bureau office located at 7900 Hickman Road, Urbandale, Iowa. At the public hearing, comments on the proposed amendments may be submitted orally or in writing. All comments must be received no later than Tuesday, January 6, 2009.

Any person who intends to attend the public hearing and has special requirements, such as those related to hearing or mobility impairments, should contact Christine Paulson at (515)242-5154 to advise of any specific needs.

These amendments are intended to implement Iowa Code section 455B.133.

The following amendments are proposed.

ITEM 1. Amend paragraph **23.1(4)“dd”** as follows:

*dd. Emission standards for industrial, commercial and institutional boilers and process heaters.* These standards apply to new and existing major sources with industrial, commercial or institutional boilers and process heaters. ~~For purposes of these standards, a boiler is defined as an enclosed device using controlled flame combustion and having the primary purpose of recovering thermal energy in the form of steam or hot water. Waste heat boilers, as defined in the federal rule, are excluded from these standards. For purposes of these standards, a process heater is defined as an~~

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

~~enclosed device using controlled flame, that is not a boiler, and the unit's primary purpose is to transfer heat indirectly to a process material (liquid, gas, or solid) or to a heat transfer material for use in a process unit, instead of generating steam. Process heaters are devices in which the combustion gases do not directly come into contact with process materials. Process heaters do not include units used for comfort or space heat, food preparation for on-site consumption, or autoclaves. (Part 63, Subpart DDDDD)\*~~

\*As of [insert effective date of this amendment], Part 63, Subpart DDDDD, is not adopted by reference. On July 30, 2007, the United States Court of Appeals for the District of Columbia Circuit issued its mandate vacating 40 CFR Part 63, Subpart DDDDD, in its entirety, and requiring EPA to repromulgate final standards for industrial, commercial or institutional boilers and process heaters at new and existing major sources.

ITEM 2. Amend paragraph **23.1(4)“dj”** as follows:

*dj. Emission standards for hazardous air pollutants for brick and structural clay products manufacturing.* These standards apply to new and existing brick and structural clay products manufacturing facilities that are, are located at, or are part of a major source of hazardous air pollutant emissions. ~~The brick and structural clay products manufacturing source category includes those facilities that manufacture brick including, but not limited to, face brick, structural brick, and brick pavers; clay pipe; roof tile; extruded floor and wall tile; or other extruded, dimensional clay products. Additional applicability criteria and exemptions from these standards are contained in the applicable subpart. (Part 63, Subpart JJJJ)\*~~

\*As of [insert effective date of this amendment], Part 63, Subpart JJJJJ, is not adopted by reference. On June 18, 2007, the United States Court of Appeals for the District of Columbia Circuit issued its mandate vacating 40 CFR Part 63, Subpart JJJJJ, in its entirety, and requiring EPA to repromulgate final standards for brick and structural clay products manufacturing at new and existing major sources.

**ARC 7400B****ENVIRONMENTAL PROTECTION COMMISSION[567]****Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 455B.474, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 135, “Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks,” Iowa Administrative Code.

The Commission adopted rules that were published in the July 2, 2008, Iowa Administrative Bulletin as **ARC 6892B**. The rules were scheduled to take effect on August 6, 2008. The rules contained some provisions which were relatively uncontroversial and some provisions that were controversial. The more controversial rules in part established a policy and procedure for the assessment of the potential risk of impact from underground storage tank (UST) petroleum releases to public water supply wells (PWSWs) which are located outside the actual or modeled contaminated groundwater plume. The rules established an assessment protocol in which owners and operators of USTs and the Department shared responsibility to initially conduct sufficient assessment of soil and groundwater contamination to determine the likelihood that a UST release could impact a PWSW. If sufficient evidence of potential or actual impact was established, the rules placed responsibility on the owner and operator to conduct further risk assessment and corrective action as necessary to protect human health and safety.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

In response to public comment, some of which supported and some of which objected to the rules, the Administrative Rules Review Committee (ARRC) at a public meeting on July 8, 2008, imposed a 70-day delay on the entire rule making (**ARC 6892B**) pursuant to Iowa Code section 17A.4(6). The ARRC requested that the primary stakeholders and Department staff attempt to reach a resolution of their differences. The 70-day delay, by law, expired October 16, 2008.

The Department and other stakeholders reached an agreement which generally provides for the Department and the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board (UST Fund) to enter into an intergovernmental agreement (28E Agreement) to jointly develop and implement a study of the risk to PWSWs from UST petroleum releases. The study is funded by public funds under the control of the UST Fund. The stakeholder agreement also required that the Commission agree to initiate a rule making to rescind those parts of the adopted rules in **ARC 6892B** which are controversial and relate to the PWSW risk assessment protocol and to amend Chapter 135 to clarify the responsibility of owners and operators to undertake further assessment and corrective action in the event the study confirms unacceptable risk to PWSWs. The stakeholders agreed not to object to the noncontroversial parts of the rule making published as **ARC 6892B**.

On October 14, 2008, the ARRC voted to impose a partial “session delay.” (See the November 5, 2008, Iowa Administrative Bulletin.) In recognition of the stakeholder agreement, the ARRC imposed a session delay only on those more controversial portions of the adopted rules published as **ARC 6892B** which dealt with the PWSW assessment protocol. The effect of the partial delay was that the prior 70-day delay on the remainder of the rule making expired October 16, 2008. The rules not subject to the session delay became effective October 17, 2008.

At a public meeting held on November 10, 2008, the Commission reviewed and approved the proposed stakeholder agreement, including the 28E Agreement, and this Notice of Intended Action.

These proposed amendments rescind those parts of the rules adopted in **ARC 6892B** which establish the policy and procedure for conducting risk assessment to PWSWs outside the actual or modeled plume. The terms of the 28E Agreement are generally accepted as being sufficient to protect PWSWs during the study. The terms of the 28E Agreement explicitly acknowledge that, in the event sufficient proof of unreasonable risk to a PWSW is established during the study, the UST Fund would provide funding to take necessary corrective action under two basic circumstances: (1) When the UST site claimant is otherwise “fund eligible,” assessment and corrective action to address risk to the PWSW would be treated as a fund-eligible cost; and (2) When the Department has issued a no further action certificate (NFA certificate) prior to a determination of risk to the PWSW, the UST Fund shall agree to provide funding for corrective action pursuant to the authority granted in Iowa Code section 455G.9(1)“k.” This provision generally specifies that the Department and UST Fund enter into an agreement to provide a funding mechanism to address unreasonable risk which is discovered after issuance of an NFA certificate and which is not the result of a release which occurs after the release for which the NFA certificate has been issued.

Under the 28E Agreement, it is possible that the study could result in establishing sufficient proof of risk to a PWSW which is located outside the actual or modeled groundwater plume. In recognition of this fact, and with the support of the Commission and the participating stakeholders, the proposed amendments add language to clarify the authority of the Commission, under 567—Chapter 135, to require the responsible UST owner and operator to undertake further assessment and corrective action consistent with the risk-based corrective action rules 567—135.8(455B) through 567—135.12(455B) when the Tier 2 groundwater model is shown to be underpredictive.

Any person may make written suggestions or comment on the proposed amendments on or before January 6, 2009. Written comments should be directed to Elaine Douskey, UST Section Supervisor, Iowa Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319. Comments may be sent by E-mail to [elaine.douskey@dnr.iowa.gov](mailto:elaine.douskey@dnr.iowa.gov).

Given the long period of public participation and the extensive stakeholder participation in the issues surrounding these amendments, the Department is conducting one public hearing. The hearing will be held on January 6, 2009, at 1:30 p.m. in the Fourth Floor Conference Rooms, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

The 28E Agreement between the Department and the UST Fund pertains to the expenditure of funds but not as a direct result of this rule making. The agencies have agreed to undertake a study of risks to PWSWs pursuant to their joint statutory authorities. Therefore, a fiscal impact statement in accordance with Iowa Code section 17A.4(3) and 25B.6 is deemed to be unnecessary.

These amendments are intended to implement Iowa Code section 455B.474.

The following amendments are proposed.

ITEM 1. Rescind the definition of “Sensitive area” in rule **567—135.2(455B)**.

ITEM 2. Adopt the following new paragraph **135.8(1)“e”**:

*e. Pathway reevaluation.* Prior to issuance of a no further action certificate in accordance with 135.12(10) and Iowa Code section 455B.474(1) “h”(3), if it is determined that the conditions for an individual pathway that has been classified as “no action required” no longer exist, or the site presents an unreasonable risk to a public water supply well, or the model used to obtain the pathway clearance underpredicts the actual contaminant plume, the individual pathway shall be further assessed consistent with the risk-based corrective action provisions in rules 567—135.8(455B) through 567—135.12(455B).

ITEM 3. Rescind and reserve paragraph **135.9(4)“f.”**

ITEM 4. Amend paragraphs **135.10(4)“a”** and **“b”** as follows:

*a. Pathway completeness.* Unless cleared at Tier 1, this pathway is complete and must be evaluated under any of the following conditions: (1) the first encountered groundwater is a protected groundwater source; or (2) there is a drinking water well or a non-drinking water well within the modeled groundwater plume or the actual plume as provided in 135.10(2) “j” and 135.10(2) “k.” ~~A public water supply screening and risk assessment must be conducted in accordance with 135.10(4) “f” for this pathway.~~

*b. Receptor evaluation.* All drinking and non-drinking water wells located within 100 feet of the largest actual plume (defined to the appropriate target level for the receptor type) must be tested, at a minimum, for chemicals of concern as part of the receptor evaluation. Actual plumes refer to groundwater plumes for all chemicals of concern. Untreated or raw water must be collected for analysis unless it is determined to be infeasible or impracticable. ~~The certified groundwater professional or the department may request additional sampling of drinking water wells and non-drinking water wells as part of its evaluation.~~

All existing drinking water wells and non-drinking water wells within the modeled plume or the actual plume as provided in paragraph “a” must be evaluated as actual receptors. Potential receptors only exist if the groundwater is a protected groundwater source. Potential receptor points of exposure are those points within the modeled plume or actual plume that exceed the potential point of exposure target level. The point(s) of compliance for actual receptor(s) is the receptor. The point(s) of compliance for potential receptor(s) is the potential receptor point of exposure as provided in 135.10(2) “j” and 135.10(2) “k.”

ITEM 5. Rescind and reserve paragraph **135.10(4)“f.”**

ITEM 6. Rescind and reserve paragraph **135.10(11)“h.”**



**ARC 7377B****ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]****Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

Iowa Code section 68A.201(2) prohibits a committee from duplicating the name of another committee organized under the campaign laws. The proposed amendment removes the word "substantially" from the current rule to bring the rule into conformity with the statute. The proposed amendment also addresses those instances in which a committee wants to use the name of a committee that was previously organized but has now been certified as dissolved.

The proposed amendment does not contain a specific waiver provision, but is subject to waiver under the provisions of 351—Chapter 15.

Any interested person may make written comments on the proposed amendment on or before December 23, 2008. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

This amendment is intended to implement Iowa Code section 68A.201(2).

The following amendment is proposed.

Amend subrule 4.2(2) as follows:

**4.2(2) *Duplication of name prohibited.*** The committee name shall not ~~substantially~~ duplicate the name of another committee organized under Iowa Code ~~Supplement~~ chapter 68A. The board shall determine whether two committee names are in ~~substantial~~ duplication in violation of Iowa Code ~~Supplement~~ section 68A.201(2)"a." A committee ~~substantially~~ duplicating the name of another organized committee shall choose a new committee name upon notification from the board. A candidate who files an amended statement of organization to reflect a change in office sought shall not be required to change the name of the candidate's committee unless the committee's name ~~substantially~~ duplicates the name of another organized committee. A committee shall not duplicate the name of a dissolved committee for a period of ten years after the dissolved committee is certified as being dissolved except when the candidate for both committees is the same individual.

**ARC 7373B****ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]****Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

## ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

The proposed amendment permits the use of candidate campaign funds to purchase any articles of clothing that are political advertising. Previously the rule only permitted the purchase of caps and T-shirts that are political advertising.

The proposed amendment does not contain a waiver provision as no new obligation is being imposed.

Any interested person may make written comments on the proposed amendment on or before December 23, 2008. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

This amendment is intended to implement Iowa Code section 68A.302.

The following amendment is proposed.

Amend paragraph **4.25(1)“e”** as follows:

*e.* Political advertising specialty items, such as campaign buttons, campaign stickers, bumper stickers, campaign pins, pencils, pens, matchbooks, balloons, scratch pads, calendars, magnets, key chains, ~~campaign caps and T-shirts~~ and articles of clothing that are political advertising.

**ARC 7380B**

**ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]**

**Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 4, “Campaign Disclosure Procedures,” Iowa Administrative Code.

The proposed amendments clarify that when payment of a civil penalty is made for a late-filed campaign report, it is not being made to advocate for or against a candidate or ballot issue. Therefore, the payment of a civil penalty may be made by a person who would otherwise be prohibited from making a campaign contribution under Iowa Code section 68A.503. The payment, if made by a person other than the committee, is not required to be disclosed on a campaign disclosure report.

The proposed amendments do not contain a waiver provision as no new obligation is being imposed.

Any interested person may make written comments on the proposed amendments on or before December 23, 2008. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

These amendments are intended to implement Iowa Code sections 68A.401(3) and 68B.32A(8).

The following amendments are proposed.

ITEM 1. Amend subrule 4.62(2) as follows:

**4.62(2) Who may make payment.** Payment may be made at the person’s discretion, including from funds of a committee or from personal funds of an officer of a committee. ~~Payments from corporate entities as described in Iowa Code Supplement section 68A.503 are prohibited, except in the case of a ballot issue committee.~~

ITEM 2. Rescind and reserve subrule **4.62(3)**.

**ARC 7378B****ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]****Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 6, "Executive Branch Ethics," Iowa Administrative Code.

Iowa Code chapter 68B contains limitations on certain activities by "officials" and "employees" of the executive branch. The proposed amendment reflects that an individual serving in an "interim" or "acting" position in the executive branch of state government is subject to those limitations.

The proposed amendment does not contain a specific waiver provision but is subject to waiver under the provisions of 351—Chapter 15.

Any interested person may make written comments on the proposed amendment on or before December 23, 2008. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

This amendment is intended to implement Iowa Code section 68B.2.

The following amendment is proposed.

Amend rule **351—6.2(68B)**, definitions of "Employee" and "Official," as follows:

*"Employee"* means an individual who is a paid employee of any agency of state government. "Employee" includes an individual employed in an interim or acting capacity. "Employee" does not include an official or an independent contractor.

*"Official"* means a statewide elected official, an executive or administrative head or heads of a state agency, a deputy executive or administrative head or heads of a state agency, a member of a board or commission as defined under Iowa Code section 7E.4, or a head of a major subunit of a state agency whose position involves a substantial exercise of administrative discretion or the expenditure of public funds. "Official" includes an individual serving in an interim or acting capacity.

**ARC 7375B****ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]****Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 6, "Executive Branch Ethics," Iowa Administrative Code.

Iowa Code section 68B.3 prohibits, with certain exceptions, officials or employees from selling goods or services having a value in excess of \$2,000 to a state agency unless the sale is made pursuant to an award or a competitively bid contract. The proposed amendments to rule 351—6.10(68B) reflect that this prohibition would include sales made to the state agency in which the official or employee serves

## ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

or is employed. The rule already exempts sales made as part of the official's or employee's official state duties, and the proposed amendments do not change that exception.

The proposed amendments do not contain a specific waiver provision but are subject to waiver under the provisions of 351—Chapter 15.

Any interested person may make written comments on the proposed amendments on or before December 23, 2008. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

These amendments are intended to implement Iowa Code section 68B.2.

The following amendments are proposed.

ITEM 1. Amend rule 351—6.10(68B), introductory paragraph, as follows:

**351—6.10(68B) Prohibition on sales; when public bids required—disclosure of income.** Pursuant to Iowa Code section 68B.3 ~~as amended by 2007 Iowa Acts, Senate File 40, section 1~~, an official or employee shall not sell, in any one occurrence, goods or services having a value in excess of \$2,000 to a state agency unless the sale is made pursuant to an award or contract let after public notice and competitive bidding. This prohibition includes sales to the state agency in which the official serves or is employed.

ITEM 2. Amend subrule 6.10(1), introductory paragraph, as follows:

**6.10(1) Exceptions.** The prohibition in Iowa Code section 68B.3 ~~as amended by 2007 Iowa Acts, Senate File 40, section 1~~, and this rule shall not apply to any of the following:

ITEM 3. Amend rule **351—6.10(68B)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 68B.3 ~~as amended by 2007 Iowa Acts, Senate File 40, section 1~~.

**ARC 7374B**

**ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]**

**Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 8, "Executive Branch Lobbying," Iowa Administrative Code.

Iowa Code section 68A.504 prohibits lobbyists from making campaign contributions during the legislative session. The proposed amendments reflect that this prohibition includes a contribution that is mailed during the legislative session but received by the candidate after the legislative session has adjourned. The proposed amendments also reflect that, for purposes of this prohibition, a legislative session starts at 12 a.m. of the first day through 11:59:59 p.m. of the day that session adjourns sine die.

The proposed amendments do not contain a specific waiver provision but are subject to waiver under the provisions of 351—Chapter 15.

Any interested person may make written comments on the proposed amendments on or before December 23, 2008. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

These amendments are intended to implement Iowa Code section 68A.201(2).

The following amendments are proposed.

## ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

ITEM 1. Amend rule 351—8.15(68A), introductory paragraph, as follows:

**351—8.15(68A) Campaign contributions by lobbyists during the regular legislative session prohibited.** Pursuant to Iowa Code ~~Supplement~~ section 68A.504, individuals who are registered in Iowa as either executive branch or legislative branch lobbyists are prohibited from contributing to, acting as an agent or intermediary for contributions to, or arranging for the making of monetary or in-kind contributions to the campaign of an elected state official, member of the general assembly, or candidate for state office on any day during the regular legislative session. This prohibition includes a contribution that is mailed during the legislative session but received by the candidate after the legislative session has adjourned.

ITEM 2. Adopt the following **new** subrule 8.15(4):

**8.15(4) Date of session.** For purposes of Iowa Code section 68A.504 and this rule, a legislative session commences at 12 a.m. of the first day of the legislative session through 11:59:59 p.m. of the day that the legislative session adjourns sine die.

ITEM 3. Amend rule **351—8.15(68A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code ~~Supplement~~ section 68A.504.

**ARC 7387B**

## **HISTORICAL DIVISION[223]**

### **Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 303.1A, the Director of the Department of Cultural Affairs proposes to amend Chapter 49, "Historical Resource Development Program Grants," Iowa Administrative Code.

The proposed amendments to Chapter 49 add language that limits the frequency of applications, clarifies limitations on matching fund sources, and requires public access to historical resources funded by the Historical Resource Development Program.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on December 23, 2008. Interested persons may submit written or oral comments by contacting Kristen Vander Molen, Department of Cultural Affairs, Historical Building, 600 East Locust Street, Des Moines, Iowa 50319-0290; fax (515)281-6975; E-mail [kristen.vandermolen@iowa.gov](mailto:kristen.vandermolen@iowa.gov). Persons who wish to convey their views orally should contact the Department of Cultural Affairs at (515)281-4228.

Also, there will be a public hearing on December 23, 2008, at 10 a.m. at the above address in the Tone Board Room. At the hearing, persons may present their views either orally or in writing. Persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Department and advise of specific needs.

These amendments are intended to implement Iowa Code chapter 303.

The following amendments are proposed.

ITEM 1. Amend rule **223—49.2(303)**, definition of "REAP/HRDP steering committee," as follows:

*"REAP/HRDP steering committee"* means the historical division's staff committee appointed by the director and consisting of the grants manager, a division ~~administrator~~ leadership team member, and

## HISTORICAL DIVISION[223](cont'd)

professional staff members from historic preservation, museum, and documentary collections interest areas.

ITEM 2. Amend rule 223—49.3(303) as follows:

**223—49.3(303) Funding policies.** The grant programs shall be conducted according to published guidelines that outline funding priorities, review criteria, application forms, adjudication processes and grantee requirements. Programs include REAP/HRDP regular grants; REAP/HRDP emergency grants; and country school grants.

**49.3(1) to 49.3(3)** No change.

**49.3(4)** An applicant may not submit more than one application in any single category in any grant cycle.

**49.3(5)** Applicants funded in two consecutive fiscal years in the same grant category are not eligible to receive funding in the same grant category during the next fiscal year.

**49.3(4) 49.3(6)** Review criteria scores shall be the official record of the proceedings of a review panel or steering committee meeting. Historical division staff shall, upon request, provide an applicant with a written record of these scores.

**49.3(5) 49.3(7)** The review panel shall make grant award recommendations to the state historical society board of trustees. The state historical society board of trustees shall make grant award recommendations to the administrator of the historical division.

**49.3(6) 49.3(8)** The historical division shall issue contracts for all funds awarded.

**49.3(7) 49.3(9)** No state funds awarded under the historical resource development program shall be used by a grantee to meet the grantee's obligation to match other historical division or cultural affairs department grants or programs.

**49.3(10)** No appropriated state funds shall be used by a grantee to match the grantee's historical resource development program grant.

**49.3(8) 49.3(11)** A grantee shall not utilize historical resource development program funds for any lobbying purpose.

**49.3(12)** An applicant shall not apply for or use any program funds for the purpose of regranting.

**49.3(13)** All government, nonprofit corporation, or Indian tribe applicants shall demonstrate that the historical resource is accessible to the public no less than an average of 16 hours per week or shall provide a statement concerning actions to be taken in the forthcoming 36 months after the grant award to provide the above-specified accessibility of the funded project to the public, unless access is restricted by specific federal or state code. Archaeological sites that are part of funded projects are not required by this program to be accessible to the public.

**49.3(14)** All private corporations, businesses, and individual applicants shall demonstrate that the historical resources which benefit from being acquired, developed or preserved, or the portions of the historical resource so benefited, shall be accessible to the public no less than an average of 96 hours per year or shall provide a statement concerning actions to be taken in the forthcoming 36 months after the grant award to provide the above-specified accessibility of the funded project to the public, unless access is restricted by specific federal or state code. Archaeological sites that are part of funded projects are not required by this program to be accessible to the public.

**49.3(9) 49.3(15)** A grantee shall credit the historical resource development program in all promotions, publicity, advertising, and printed materials relating to the grant-supported project, with the following credit line or a reasonable facsimile: "This program is supported in part by the State Historical Society of Iowa, Historical Resource Development Program." Noncompliance with this requirement shall jeopardize future funding of the grantee by the historical division.

**49.3(10) 49.3(16)** The historical division may, for cause, find that a grantee is not in compliance with the requirements of this program or the terms of the contract. At the division's discretion, remedies for noncompliance may include penalties or the repayment of program funds. Reasons for a finding of noncompliance include but are not limited to: the grantee's use of program funds for activities not described in its application or not permitted under the program; the grantee's failure to complete approved activities in a timely manner; the grantee's failure to comply with any applicable professional standards,

HISTORICAL DIVISION[223](cont'd)

state rules, or federal regulations; the lack of a continuing capacity on the part of the grantee to carry out the approved program in a timely manner; or violation of the terms of the contract.

**ARC 7372B****HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code sections 234.6, 237.3, and 238.16, the Department of Human Services proposes to amend Chapter 108, "Licensing and Regulation of Child-Placing Agencies," Chapter 113, "Licensing and Regulation of Foster Family Homes," Chapter 156, "Payments for Foster Care and Foster Parent Training," and Chapter 200, "Adoption Services," Iowa Administrative Code.

The proposed amendments would make the following changes to rules regarding foster care and adoption:

- Amend record-check policies for foster and adoptive families to require fingerprinting only for the parent applicants, not for others in the household. The Department's current policy goes beyond what is required in federal legislation. Provisions for evaluating record-check findings are consolidated in the foster care licensing chapter.
- Amend policies on the license capacity for foster family homes to clarify the relationship between children already living with the family and the potential license capacity. The amendments specify that a license must have a capacity of at least one and that a child over the age of 18 who remains in foster care placement must be counted in the license capacity.
- Remove policies relating to "emergency" foster family care. No special emergency care homes are being designated, and variances to exceed a home's capacity for a placement may be granted under the provisions for placing a specific child. Special payment provisions for emergency foster family care beds would be eliminated.
- Require foster parents who make purchases using a child's clothing allowance to submit receipts for auditing.

Except for the capacity variance provisions, these amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before December 24, 2008. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments are intended to implement Iowa Code sections 234.35, 237.8, and 600.8 and Iowa Code chapter 238.

The following amendments are proposed.

ITEM 1. Amend subparagraph **108.8(1)"c"(13)** as follows:

(13) Record checks. The licensed child-placing agency shall submit record checks for each applicant and for anyone who is 14 years of age or older living in the home of the applicant to determine whether they have any founded child abuse reports or criminal convictions or have been placed on the sex offender registry. ~~The licensed child-placing agency shall use~~ Form 470-0643, Request for Child Abuse Information, and Form 595-1396, DHS Criminal History Record Check, Form B, shall be used for this purpose. ~~Each person subject to record checks~~ applicant ~~shall also be fingerprinted~~

## HUMAN SERVICES DEPARTMENT[441](cont'd)

for a national criminal history check. The department's contractor for the recruitment and retention of resource families shall assist applicants in completing required record checks, including fingerprinting. Any criminal or abuse records discovered shall be evaluated according to the procedures in rule 441—113.13(237).

ITEM 2. Amend subrule 113.4(1) as follows:

**113.4(1) Number of children.** A foster family home ~~shall be licensed for the may care of~~ for up to five children ~~unless a variance is approved as described in this rule, including~~ The license capacity shall be based on the number of the foster family's biological and adoptive children and any relative placements. The license shall be issued for at least one child. A child who has reached the age of 18 and remains eligible for foster family care shall be included in the license capacity. Any variance to this rule must:

a. and b. No change.

c. Meet one of the following criteria:

(1) No change.

(2) The foster parents have three or more ~~biological and adoptive children and relative placements~~ in the home and have shown the ability to parent a large number of children. A variance may be approved to allow the placement of up to three foster children as set forth in the chart below:

No. of Children in the <u>Home (birth/relative/adoptive placements)</u>	Maximum License Capacity:	
	Without variance	With variance
0 children	5	Not applicable
1 child	4	Not applicable
2 children	3	Not applicable
3 children	2	3
4 children	1	3
5 or more children	<del>0</del> <u>Not applicable</u>	3

~~(3) —An emergency placement must be made in a foster family home that causes the home to exceed its licensed capacity. These emergency placements shall be made according to a preapproved service area plan as outlined below and are limited to a maximum of 30 days.~~

~~Before the start of each fiscal year, each service area shall submit to the central office for approval a plan for when an emergency occurs which necessitates the placement of a child in a foster family home that would exceed the licensing capacity. The plan shall define emergencies and identify a specific pool of preapproved homes which shall provide for placement of up to three additional foster children above the number that is allowed by the variances in the chart in subparagraph (2).~~

~~(4) (3)~~ A variance beyond the maximum capacity of the foster home license is needed for the placement of a specific child in foster family care. A child-specific variance shall end when that child leaves the placement or any other change brings the family into licensed capacity.

d. No change.

ITEM 3. Amend rule 441—113.13(237) as follows:

**441—113.13(237) Record checks.** ~~The department shall submit record~~ Record checks are required for each foster parent applicant and for anyone who is 14 years of age or older living in the home of the applicant. The purpose of the record checks is to determine whether they have any of these persons has any founded child abuse reports or criminal convictions or have has been placed on the sex offender registry. The department shall use Form 470-0643, Request for Child Abuse Information, and Form 595-1396, DHS Criminal History Record Check, Form B, shall be used for this purpose. Each person subject to record checks foster parent applicant shall also be fingerprinted for a national criminal history check. The department's contractor for the recruitment and retention of resource families shall assist applicants in completing required record checks, including fingerprinting.



## HUMAN SERVICES DEPARTMENT[441](cont'd)

**113.13(1) *Evaluation of record.*** If the applicant or anyone living in the home has a record of founded child abuse, a criminal conviction, or placement on the sex offender registry, the department shall not license the applicant as a foster family, unless an evaluation determines that the abuse or criminal conviction does not warrant prohibition of license.

~~EXCEPTION: An individual applying to be a foster parent shall not be granted a license and an evaluation shall not be performed if the applicant or anyone living in the home of the applicant has been convicted of a felony offense as set forth in Iowa Code section 237.8(2)“a.” The person making the investigation shall not approve a prospective applicant and shall not perform an evaluation if the applicant or anyone living in the home of the applicant has committed a crime in another state that would be a forcible felony if the crime would have been committed in Iowa, as set forth in Iowa Code section 237.8(2)“a.”~~

a. *Exclusion.* An evaluation shall not be performed if:

(1) A person has been convicted of a felony offense as set forth in Iowa Code section 237.8(2)“a”(4) or 600.8(2)“b”(1); or

(2) A person has committed a crime in another state that would be a felony as set forth in Iowa Code section 237.8(2)“a”(4) or 600.8(2)“b”(1) if the crime would have been committed in Iowa.

b. *Scope.* The evaluation shall consider the nature and seriousness of the founded child abuse or crime in relation to:

(1) ~~the~~ The position sought or held,

(2) ~~the~~ The time elapsed since the circumstances under which the abuse or crime was committed,

(3) ~~the~~ The degree of rehabilitation,

(4) ~~the~~ The likelihood that the person will commit the abuse or crime again, and

(5) ~~the~~ The number of abuses or crimes committed by the person.

c. *Evaluation form.* The person with the founded child abuse or criminal conviction report shall complete and return Form 470-2310, Record Check Evaluation, within ten calendar days of the date ~~on~~ the form of receipt to be used to assist in the evaluation. Failure of the person to complete and return Form 470-2310 within the specified time frame shall result in denial of licensure. Form 470-2386, Record Check Decision, shall be issued when an applicant fails to complete the evaluation form within the specified time frame.

**113.13(2) *Evaluation process.*** The service area manager or designee shall ~~make~~ conduct the evaluation and make the decision. Within 30 days of receipt of the completed Form 470-2310, Record Check Evaluation, the department shall mail to the individual on whom the evaluation was completed ~~and to the registrant for an employee of the registrant~~ Form 470-2386, Record Check Decision, ~~that~~ which explains the decision reached regarding the evaluation of an abuse or a crime. The department shall also issue Form 470-2386 when an applicant fails to complete the evaluation form within the specified time frame.

**113.13(3) *License renewal.*** Foster parents applying for ~~an annual license renewal of a license may~~ shall be subject to the same checks as new applicants ~~when there is reason to believe that a founded abuse or conviction of a crime has occurred, except for fingerprinting.~~ The department shall evaluate only abuses and convictions of crimes that occurred since the last record check. The evaluation shall be conducted using the same process.

This rule is intended to implement Iowa Code section 237.8(2).

ITEM 4. Amend subrule 113.17(1) as follows:

**113.17(1) *Physical examinations.***

a. Each child ~~should~~ shall have ~~a~~ an initial physical examination by a physician ~~prior to before the initial~~ placement in the foster home ~~to determine the child is free from contagious or infectious diseases during an episode of care or within 14 calendar days of placement.~~ When this physical examination cannot be given prior to admission, an examination shall be scheduled within seven days after placement. The physician shall complete a preliminary screening for dental and mental health and refer the child to a dentist or mental health professional if appropriate. To address any immediate medical needs, the

## HUMAN SERVICES DEPARTMENT[441](cont'd)

child shall be seen immediately at an emergency room, an urgent care center, or other community health resource.

b. An annual medical review of treatment received shall be obtained from the health practitioner or practitioners.

c. When a child is in continuous foster care, a new physical examination shall not be required when the child transfers from one foster family home to another unless there is some indication that an examination is necessary.

ITEM 5. Rescind the definition of “Emergency foster family care” in rule **441—156.1(234)**.

ITEM 6. Amend subrule 156.8(1) as follows:

**156.8(1) Clothing allowance.** When, in the judgment of the worker, clothing is needed at the time the child is removed from the child’s home and placed in foster care, an allowance may be authorized, not to exceed \$250, to purchase clothing.

a. A second clothing allowance, not to exceed \$200 for family foster care and \$100 for all other levels, may be approved, not more than once within a calendar year, by the worker when a child in foster care needs clothing to replace lost clothing or because of unusual growth or weight change, and the child does not have escrow funds.

b. When clothing is purchased by the foster family, the foster family shall submit receipts to the worker within 30 days of purchase for auditing purposes, using Form 470-1952, Foster Care Clothing Allowance.

ITEM 7. Amend rule 441—156.11(234), introductory paragraph, as follows:

**441—156.11(234) Emergency care.** ~~Each service area shall have facilities to provide 24-hour emergency foster care. Emergency care shall not exceed 30 days in one six-month period, and the facility’s policy may limit placement to less than 30 days. The following options shall be available for funding emergency care for each service area:~~

ITEM 8. Rescind and reserve subrules **156.11(1)** and **156.11(2)**.

ITEM 9. Amend paragraph **200.4(1)“b”** as follows:

b. Record checks. ~~The department shall submit record~~ Record checks are required for each applicant and for anyone who is 14 years of age or older living in the home of the applicant to determine whether they have founded child abuse reports or criminal convictions or have been placed on the sex offender registry. ~~The department shall use~~ Form 470-0643, Request for Child Abuse Information, and Form 595-1396, DHS Criminal History Record Check, Form B, shall be used for this purpose. ~~Each person subject to record checks~~ applicant shall also be fingerprinted for a national criminal history check. The department’s contractor for the recruitment and retention of resource families shall assist applicants in completing required record checks, including fingerprinting.

(1) If the applicant, or anyone living in the home of the applicant, has a record of founded child abuse, a criminal conviction, or placement on the sex offender registry, the department shall not approve the applicant as an adoptive family, unless an evaluation determines that the abuse or criminal conviction does not warrant prohibition of approval. The evaluation shall be conducted according to procedures in 441—subrule 113.13(1) or procedures in 441—subrule 108.9(4) for a child-placing agency.

~~EXCEPTION: The person making the investigation shall not approve a prospective applicant and shall not perform an evaluation if the applicant or anyone living in the home of the applicant has been convicted of a felony offense as set forth in Iowa Code section 600.8(2) “b.” The person making the investigation shall not approve a prospective applicant and shall not perform an evaluation if the applicant or anyone living in the home of the applicant has committed a crime in another state that would be a forcible felony if the crime would have been committed in Iowa, as set forth in Iowa Code section 600.8(2) “b.”~~

~~The evaluation shall consider the nature and seriousness of the abuse or crime, the time elapsed since the commission of the founded or confirmed abuse or crime, the circumstances under which the abuse or crime was committed, the degree of rehabilitation, the likelihood that the person will commit the abuse or crime again, and the number of abuses or crimes committed by the person.~~

## HUMAN SERVICES DEPARTMENT[441](cont'd)

~~The person with the founded child abuse or criminal conviction report shall complete and return Form 470-2310, Record Check Evaluation, within ten calendar days of the date on the form to be used to assist in the evaluation. Failure of the person to complete and return Form 470-2310 within the specified time frame shall result in denial of approval for adoption.~~

~~The evaluation and decision shall be made by the service area manager or designee. Within 30 days of receipt of the completed Form 470-2310, the department shall mail to the individual on whom the evaluation was completed Form 470-2386, Record Check Decision, which explains the decision reached regarding the evaluation of an abuse or crime. Form 470-2386 shall also be issued when an applicant fails to complete the evaluation form within the specified time frame.~~

(2) The department shall assess fees associated with the record checks to the adoptive applicant unless the family is being studied to adopt a child with special needs.

**ARC 7402B****IOWA FINANCE AUTHORITY[265]****Notice of Termination**

Pursuant to the authority of Iowa Code section 17A.3(1)“b” and Iowa Code Supplement section 16.5(1)“r,” the Iowa Finance Authority terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on September 10, 2008, as **ARC 7136B** to amend Chapter 12, “Low-Income Housing Tax Credits,” Iowa Administrative Code.

The Notice of Intended Action was published to solicit comments on an amendment to Chapter 12, “Low-Income Housing Tax Credits,” Iowa Administrative Code, to adopt the first amended qualified allocation plan as the Authority’s low-income housing tax credit allocation plan for 2009. Subsequent to that publication, federal legislation was passed that prompted the Authority to draft and adopt the second amended qualified allocation plan, Adopted and Filed Emergency as **ARC 7293B** and published in the Iowa Administrative Bulletin on November 5, 2008. The Authority concurrently published a Notice of Intended Action, **ARC 7294B**, to solicit comments on the adoption of the second amended qualified allocation plan.

Because the Notice of Intended Action published as **ARC 7136B** has been superseded by the subsequent Adopted and Filed Emergency (published as **ARC 7293B**) and Notice of Intended Action (published as **ARC 7294B**), the Authority is terminating the Notice of Intended Action published as **ARC 7136B**.

**ARC 7401B****PROFESSIONAL LICENSURE DIVISION[645]****Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 147.76, the Board of Barbering hereby gives Notice of Intended Action to rescind Chapter 20, “Administrative and Regulatory Authority for the Board of Barbering,” to amend Chapter 21, “Licensure of Barbers,” Chapter 22, “Sanitation for Barbershops and Barber Schools,” Chapter 23, “Barber Schools,” Chapter 24, “Continuing Education for Barbers,” and Chapter 25, “Discipline for Barbers, Barber Instructors, Barbershops and Barber Schools,” and to rescind Chapter 26, “Fees,” Iowa Administrative Code.

The proposed amendments update and clarify outdated language and rescind duplicative language found in 645—Chapters 4 and 5. The proposed amendments to rule 645—21.16(17A,147,272C) and

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

subrule 24.2(1) require a barber instructor to obtain four hours of continuing education in teaching methodology in addition to the eight hours of continuing education required for renewal or reactivation of the barber license. The proposed amendments also update rules to be consistent with legislative changes promulgated by 2008 Iowa Acts, House File 2212.

Any interested person may make written comments on the proposed amendments no later than December 23, 2008, addressed to Ella Mae Baird, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail [ebaird@idph.state.ia.us](mailto:ebaird@idph.state.ia.us).

A public hearing will be held on Tuesday, December 23, 2008, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 158 and 272C and 2008 Iowa Acts, House File 2212.

The following amendments are proposed.

ITEM 1. Rescind and reserve **645—Chapter 20**.

ITEM 2. Amend **645—Chapter 21**, title, as follows:  
**LICENSURE OF BARBERS**

ITEM 3. Rescind rule 645—21.2(158) and adopt the following **new** rule in lieu thereof:

**645—21.2(158) Requirements for licensure.**

**21.2(1)** The following criteria shall apply to licensure:

*a.* The applicant shall complete a board-approved application form. Application forms may be obtained from the board Web site (<http://www.idph.state.ia.us/licensure>) or directly from the board office. The application and licensure fee shall be sent to the Board of Barbering, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

*b.* The applicant shall present proof of completion of the tenth grade or equivalent education. In the event the applicant is a refugee or immigrant from a country where high school records no longer exist, the applicant shall be considered to have met this requirement when the applicant submits an affidavit attesting to the fact that the applicant has met the tenth-grade requirement.

*c.* The applicant shall provide an official copy of the transcript or diploma sent directly from the school to the board showing proof of completion of training at a barber school licensed by the board. If the applicant graduated from a school that is not licensed by the board, the applicant shall direct the school to provide an official transcript showing completion of a course of study that meets the requirements of rule 645—23.8(158).

*d.* The applicant shall provide verification of license(s) from every state in which the applicant has been licensed as a barber, sent directly from the state(s) to the Iowa board of barbering office.

*e.* An application for barber examination must be postmarked at least 14 days prior to the examination.

*f.* The candidate shall take and pass the written and practical examinations required by the board.

*g.* Licensees who were issued their licenses within six months prior to renewal shall not be required to renew their licenses until the renewal month two years later.

*h.* Incomplete applications that have been on file in the board office for more than two years shall be:

(1) Considered invalid and shall be destroyed; or

(2) Maintained upon written request of the candidate. The candidate is responsible for requesting that the file be maintained.

**21.2(2)** Foreign-trained barbers shall:

*a.* Provide an equivalency evaluation of their educational credentials by one of the following: International Educational Research Foundation, Inc., Credentials Evaluation Service, P.O. Box 3665, Culver City, CA 90231-3665, telephone (310)258-9451, Web site [www.ierf.org](http://www.ierf.org) or E-mail at [info@ierf.org](mailto:info@ierf.org); or World Education Services (WES) at (212)966-6311, electronically at [www.wes.org](http://www.wes.org) or

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

by writing to WES, P.O. Box 745, Old Chelsea Station, New York, NY 10113-0745. The professional curriculum must be equivalent to that stated in these rules. A candidate shall bear the expense of the curriculum evaluation.

b. Provide a notarized copy of the certificate or diploma awarded to the applicant from a barber school in the country in which the applicant was educated.

c. Receive a final determination from the board regarding the application for licensure.

**21.2(3) Requirements for an instructor's license.**

a. An applicant for an instructor's license shall:

- (1) Complete all requirements stated in subrule 21.2(1), paragraph "a";
- (2) Present proof of graduation from an accredited high school or the equivalent thereof;
- (3) Be licensed in the state of Iowa as a barber for not less than two years; and
- (4) Pass the instructor's examinations administered by the board or its designee.

b. Instructors who were issued their licenses within six months prior to renewal shall not be required to renew their licenses until the renewal month two years later.

c. Incomplete applications that have been on file in the board office for more than two years shall be:

- (1) Considered invalid and shall be destroyed; or
- (2) Maintained upon written request of the candidate. The candidate is responsible for requesting that the file be maintained.

d. An applicant who meets the requirements for an instructor's license except for the examinations may apply for a temporary permit to be an instructor. The temporary permit shall be valid for a maximum of six months from the issue date of the permit and shall not be renewable.

ITEM 4. Amend subrule 21.3(2) as follows:

**21.3(2) Persons** Applicants who ~~do not appear on the appointed date assigned to them to take~~ fail to appear for the examination must ~~notify the board of barbering request~~ reschedule the examination in writing or by telephone to ~~schedule a new appointment date~~ reschedule the examination. Examination fees ~~cannot be refunded~~ are not refundable, but ~~the applicant will not be required to pay the next examination fee if the applicant can show proof that the applicant's inability to take the examination was not the applicant's fault~~ the rescheduled examination fee may be waived upon a showing of good cause for missing the previously scheduled examination. Proof of ~~inability to take the examination~~ good cause shall be submitted to the board office with ~~a written~~ the request to reschedule the examination. An applicant shall be required to pay the reexamination fee if the applicant does not appear for a subsequent examination.

ITEM 5. Rescind and reserve rule ~~645—21.4(158)~~.

ITEM 6. Rescind rule 645—21.5(158) and adopt the following **new** rule in lieu thereof:

**645—21.5(158) Licensure by endorsement.** The board may issue a license by endorsement to any applicant from the District of Columbia or another state, territory, province or foreign country who has held an active license under the laws of another jurisdiction for at least 12 months during the past 24 months and who:

**21.5(1)** Submits to the board a completed application and pays the licensure fee specified in 645—subrule 5.2(1).

**21.5(2)** Provides verification of license(s) from every state in which the applicant has been licensed as a barber, sent directly from the state(s) to the Iowa board of barbering office. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

- a. Licensee's name;
- b. Date of initial licensure;
- c. Current licensure status; and
- d. Any disciplinary action taken against the license.

**21.5(3)** Takes and passes the written and practical examination administered by the board.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 7. Amend subrule 21.9(3) as follows:

**21.9(3)** Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in ~~645—subrule 26.1(11)~~ 645—subrule 5.2(10). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

ITEM 8. Adopt the following new rule 645—21.11(158):

**645—21.11(158) Requirements for a barbershop license.**

**21.11(1)** A barbershop shall not operate unless the owner of the barbershop possesses a current barbershop license issued by the board. The following criteria shall apply to licensure:

a. The owner shall complete a board-approved application form. Application forms may be obtained from the board's Web site (<http://www.idph.state.ia.us/licensure>), or directly from the board office. The application and fee shall be submitted to the Board of Barbering, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

b. The barbershop shall meet the requirements for sanitary conditions established in 645—Chapter 22.

c. A barbershop license shall be issued for a specific location. A change in location or site of a barbershop shall result in the cancellation of the existing license and necessitate application for a new license and payment of the fee required by 645—subrule 5.2(8). A change of address without change of actual location shall not be construed as a new site.

d. A barbershop license is not transferable. A change in ownership of a barbershop shall result in the cancellation of the existing license and necessitate application for a new license and payment of the fee required by 645—subrule 5.2(8).

e. A change in the name of a barbershop shall be reported to the board within 30 days of the name change.

f. Upon closure of a barbershop, the barbershop license shall be submitted to the board office within 30 days.

g. A barbershop that was issued a license within six months prior to renewal shall not be required to renew the license until the renewal month two years later.

**21.11(2)** Incomplete applications that have been on file in the board office for more than two years shall be:

a. Considered invalid and shall be destroyed; or

b. Maintained upon written request of the candidate. The candidate is responsible for requesting that the file be maintained.

ITEM 9. Rescind subrule 21.12(8) and adopt the following new subrule in lieu thereof:

**21.12(8)** Inactive barbershop license. If the renewal application and fee are not postmarked within 30 days after the license expiration date, the barbershop license is inactive. To reactivate a barbershop license, the reactivation application and fee shall be submitted to the board office.

ITEM 10. Rescind and reserve rules **645—21.13(147)**, **645—21.14(147)** and **645—21.15(272C)**.

ITEM 11. Amend rule 645—21.16(17A,147,272C) as follows:

**645—21.16(17A,147,272C) License reactivation.** To apply for reactivation of an inactive license, a licensee shall:

**21.16(1)** No change.

**21.16(2)** Pay the reactivation fee that is due as specified in ~~645—subrule 26.1(12)~~ 645—subrule 5.2(11).

**21.16(3)** Provide verification of current competence to practice as a barber by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) No change.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

(2) Verification of completion of eight hours of continuing education that meet the continuing education standards defined in rule 645—24.3(158,272C) within two years of application for reactivation. ~~An individual whose license was on inactive status prior to September 21, 2005, may reactivate the license between September 21, 2005, and June 30, 2007, by furnishing evidence of current full-time practice in another state of the United States or District of Columbia and completion of substantially equivalent continuing education.~~

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) No change.

(2) Verification of completion of eight hours of continuing education that meet the continuing education standards defined in rule 645—24.3(158,272C) within two years of application for reactivation; and

(3) Verification of passing the state examination administered by the board within one year immediately prior to reactivation if the applicant does not have a current license and has not been in active practice in the United States during the past five years. ~~An individual whose Iowa license was on inactive status for more than five years prior to September 21, 2005, may reactivate the license between September 21, 2005, and June 30, 2007, without passing the state examination administered by the board.~~

**21.16(4)** Licensees who are barber instructors shall obtain an additional four hours of continuing education in teaching methodology.

ITEM 12. Renumber rule **645—21.17(17A,147,272C)** as **645—21.18(17A,147,272C)**.

ITEM 13. Adopt the following new rule 645—21.17(17A,147,272C):

**645—21.17(17A,147,272C) Reactivation of a barbershop license.** To apply for reactivation of an inactive license, a licensee shall:

**21.17(1)** Submit a reactivation application on a form provided by the board.

**21.17(2)** Pay the reactivation fee that is due as specified in 645—subrule 5.2(12).

**21.17(3)** Meet the requirements for sanitary conditions established in 645—Chapter 22.

ITEM 14. Amend **645—Chapter 22**, title, as follows:

SANITATION FOR BARBERSHOPS AND BARBER SCHOOLS

ITEM 15. Amend rule 645—22.3(147) as follows:

**645—22.3(147) Display of licenses.**

**22.3(1)** No change.

**22.3(2)** The original license certificate, duplicate certificate, reissued certificate or temporary permit ~~shall be visibly displayed~~ for each licensee and temporary permit holder employed by the barbershop or barber school shall be posted and visible to the public.

**22.3(3)** Each licensee shall:

a. Display the current wallet card with the certificate, or

b. Have the current wallet card in the licensee's possession.

~~EXCEPTION: A licensee who was issued an initial license between January 1, 2002, and July 15, 2004, will not be required to meet this requirement until the first renewal of the license.~~

ITEM 16. Amend subrules 22.4(1) and 22.4(2) as follows:

**22.4(1)** Each barbershop owner shall ~~hire~~ ensure that individuals who provide barbering or cosmetology services hold a current and valid Iowa license or temporary work permit to practice barbering or cosmetology ~~to provide barbering or cosmetology services.~~

**22.4(2)** Each ~~supervisor~~ owner shall ~~be responsible for ensuring~~ ensure that all employees observe all applicable rules.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 17. Rescind rule 645—22.8(158) and adopt the following **new** rule in lieu thereof:

**645—22.8(158) Smoking.** Barbershops licensed by the board shall comply with the smokefree air Act, 2008 Iowa Acts, House File 2212.

ITEM 18. Amend rule **645—22.11(158)**, paragraph “2,” as follows.

2. ~~Closed receptacles~~ Receptacles to hold all soiled towels and capes;

ITEM 19. Amend rule 645—23.4(272C) as follows:

**645—23.4(272C) Inactive school license.**

**23.4(1)** If the renewal fee is received more than 30 days after the license expiration date, the school license is inactive. To ~~reinstate~~ reactivate the school license, the ~~reinstatement fee, the renewal fee for each year the license is inactive, and the late reactivation application and~~ fee shall be submitted to the board.

~~23.4(2) After the reinstatement of an inactive license, the barber school shall renew at the next scheduled renewal date.~~

~~23.4(3)~~ **23.4(2)** A barber school that has not renewed the school license within the required time frame will have an inactive license and shall not provide schooling or services until the license is ~~reinstated~~ reactivated.

ITEM 20. Rescind and reserve rule **645—23.5(147)**.

ITEM 21. Amend rule 645—23.6(158) as follows:

**645—23.6(158) Physical requirements for barber schools.** Each licensed barber school shall ~~provide~~:

1. ~~A~~ Provide a clinic area where paying customers will receive services. The clinic area shall be confined to the premises occupied by the school.

2. ~~A school that is~~ Be large enough and be equipped to provide room(s) separate from the clinic area for lectures and demonstration purposes.

3. ~~A~~ Provide a library for students that contains textbooks, videos, current trade publications and business management materials. The contents of the library shall be current within the previous ten years and shall cover the topics necessary for the student to master the skill of barbering.

4. ~~An~~ Have an administrative office.

5. ~~If a school has a laundry room, it must be separated~~ Allow separation of laundry room from the clinic area by a full wall or partition if the school has a laundry room.

6. ~~Closed~~ Provide closed cabinets or a separate room for storing ~~extra~~ supplies.

7. Meet the sanitation requirements in 645—Chapter 22.

ITEM 22. Amend rule 645—23.7(158) as follows:

**645—23.7(158) Minimum equipment requirements.** Each barber school shall have, at a minimum, the following equipment:

1. and 2. No change.

3. ~~Each~~ Audiovisual equipment available for each classroom shall include a large chalkboard or equivalent.

4. to 11. No change.

ITEM 23. Amend subrule 24.2(1) as follows:

**24.2(1)** The biennial continuing education compliance period shall extend for a two-year period beginning on July 1 and ending on June 30 of each even-numbered year. Each biennium, each person who is licensed to practice as a barber in this state shall be required to complete a minimum of eight hours of continuing education approved by the board. A licensee who is a barber instructor shall obtain four hours in teaching methodology in addition to meeting all continuing education requirements for renewal of the barber license.



## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 24. Rescind and reserve rules **645—24.4(158,272C)**, **645—24.5(158,272C)** and **645—24.6(158,272C)**.

ITEM 25. Amend subrule 25.2(11) as follows:

**25.2(11)** Conviction of a ~~felony crime~~ related to the profession or occupation of the licensee or the conviction of any ~~felony crime~~ that would affect the licensee's ability to practice within the profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

ITEM 26. Amend subrule 25.2(22) as follows:

**25.2(22)** Submission of a false report of continuing education ~~or failure to submit the biennial report of continuing education.~~

ITEM 27. Rescind and reserve rule **645—25.5(158)**.

ITEM 28. Rescind and reserve **645—Chapter 26**.

**ARC 7405B**

## **TREASURER OF STATE[781]**

### **Notice of Intended Action**

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of 2008 Iowa Acts, Senate File 2432, sections 43 and 44, the Treasurer of State hereby gives Notice of Intended Action to adopt new Chapter 20, "Fairgrounds Infrastructure Grant Program," Iowa Administrative Code.

This new chapter establishes criteria for awarding infrastructure grants to qualified fairs that are members of the Association of Iowa Fairs. This grant program will allow fairs to make improvements to the permanent infrastructure of fairgrounds, including the construction, major renovation, or major repairs of buildings, appurtenant structures, or utilities. The grant program is the result of legislation, 2008 Iowa Acts, Senate File 2432, sections 43 and 44, that dedicates \$530,000 from the Rebuild Iowa Infrastructure Fund of the state to this program.

Any interested person may make written suggestions or comments pertaining to the proposed rules on or before 4:30 p.m. on December 23, 2008. Such written materials should be directed to Stephen Larson, Office of the Treasurer of State, State Capitol Building, Des Moines, Iowa 50319; fax (515)281-7562; or E-mail [steve.larson@iowa.gov](mailto:steve.larson@iowa.gov). Persons wishing to convey their views orally should contact Stephen Larson by telephone at (515)281-5644.

A public hearing to receive comments about the proposed rules will be held from 2 to 3:30 p.m. on December 23, 2008, in the Lucas Conference Room, First Floor, Room 148, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules.

These rules are intended to implement 2008 Iowa Acts, Senate File 2432, sections 43 and 44.

The following amendment is proposed.

Adopt the following new 781—Chapter 20:

### **CHAPTER 20**

#### **FAIRGROUNDS INFRASTRUCTURE GRANT PROGRAM**

**781—20.1(82GA,SF2432) Fairgrounds infrastructure grant program.** An independent fairgrounds infrastructure grant program is established in the department, with the funds provided from the

## TREASURER OF STATE[781](cont'd)

fairgrounds infrastructure aid fund established in the state treasury and under the authority of the department.

**781—20.2(82GA,SF2432) Purpose.** The purpose of the fairgrounds infrastructure grant program is to establish the procedures and guidelines for the distribution of department funding for infrastructure improvements to qualified fairs that belong to the Association of Iowa Fairs. No grant shall be awarded for less than \$5,000 or more than \$50,000 during any fiscal year. The department shall issue awards in accordance with the availability of moneys in the fairgrounds infrastructure aid fund.

**781—20.3(82GA,SF2432) Definitions.** In addition to the terms defined in Iowa Code section 174.1, the following terms, when used in this chapter, shall have the following meanings, unless the context otherwise requires:

*“Department”* means the office of the treasurer of state.

*“Eligible applicant”* means a qualified fair that is a member in good standing of the Association of Iowa Fairs.

*“Fund”* means the fairgrounds infrastructure aid fund established pursuant to 2008 Iowa Acts, Senate File 2432, section 43.

*“Grant”* means funds received through the program as evidenced by a cost-share agreement with the department.

*“Grantee”* means any eligible applicant receiving funds under this program.

*“Matching funds”* means cash or nonfinancial support that is associated with the improvements as provided by the eligible applicant.

*“Nonfinancial support”* may include, but is not limited to, the value of labor and services, real property, and personal property donated for purposes of the project, which are considered at their fair market value.

*“Program”* means the fairgrounds infrastructure grant program.

**781—20.4(82GA,SF2432) Application procedures and content.** The department shall develop an application for fairs to complete and submit to the department in order to apply for a grant under this program.

**20.4(1)** Applications must be completed and submitted to the department between July 1 and December 1 of each year.

**20.4(2)** Applications may be obtained by contacting the Office of the Treasurer of State, Capitol Building, Des Moines, Iowa 50319; telephone (515)281-5368.

**20.4(3)** Applications must be received or postmarked on or before December 1 of each year. Applications received after that date may be returned to the applicant.

**20.4(4)** An application shall include, but not be limited to:

- a. The applicant’s name, mailing address, E-mail address, contact person, and contact information.
- b. A statement of the specific amount of grant funds requested.
- c. An explanation of the type of improvement or improvements, with specific amounts that will be expended to pay for the improvement or improvements.
- d. An explanation as to the source of matching funds.
- e. A copy of the applicant’s most current financial statement as required under Iowa Code section 174.19.

**20.4(5)** If additional information is required, the applicant will be notified of the request for additional information.

**781—20.5(82GA,SF2432) Eligibility.** To be eligible for the fairgrounds infrastructure grant program, a fair must meet the following threshold requirements:

**20.5(1)** The source of the matching funds shall not include state aid.

**20.5(2)** An applicant must be a member in good standing of the Association of Iowa Fairs.

## TREASURER OF STATE[781](cont'd)

**20.5(3)** The application shall be signed by two fair officials who are members of the entity seeking the grant.

**20.5(4)** The applicant association must adopt a resolution requesting fairgrounds infrastructure aid funds.

**20.5(5)** The grant amount requested shall be not less than \$5,000 and not greater than \$50,000 during any fiscal year.

**781—20.6(82GA,SF2432) Application review criteria.** Applications that meet the threshold requirements detailed in rule 20.5(82GA,SF2432) will be reviewed by the department and representatives of the Association of Iowa Fairs. The department shall evaluate and rank applications based on the following criteria:

**20.6(1)** Inclusion of, at a minimum, the information detailed in rule 20.5(82GA,SF2432).

**20.6(2)** Compatibility with the program as described in 2008 Iowa Acts, Senate File 2432, section 44.

**20.6(3)** The feasibility of the proposed project.

**20.6(4)** The proportion of matching funds to be contributed to the project.

**20.6(5)** The extent to which the facilities enhance or promote the fair.

**781—20.7(82GA,SF2432) Selection process.** The department will determine, contingent upon availability of funds, the number of grant awards and the amount of each grant award.

**781—20.8(82GA,SF2432) Grant denial.** An application may be denied for reasons that include, but are not limited to, the following:

**20.8(1)** The applicant does not meet the eligibility requirements set forth in rule 20.5(82GA,SF2432).

**20.8(2)** The applicant does not provide sufficient information as requested in the application.

**20.8(3)** Funds are insufficient to award financial assistance to all qualified applicants.

**20.8(4)** The department received the application after the deadline stated in the application.

**781—20.9(82GA,SF2432) Administration.**

**20.9(1) Cost-share agreement.** Each grant awarded under this program shall be conveyed by means of a cost-share agreement between the management of the eligible fair and the department. The cost-share agreement shall include, but will not be limited to:

*a.* A description and explanation of the project or projects being funded, including a statement of the matching funds that will be pledged by the grantee.

*b.* The dollar amount of the grant award and the manner in which funds will be transferred.

*c.* The requirement for the grantee to submit to the department a report following the implementation of the funded project or projects. The report shall state how the grant funds and matching funds were expended in the execution of the contract.

*d.* The department's remedies in the event of a grantee's breach of contract.

**20.9(2) Requests for funds.** Grantees shall submit requests for funds in the manner and on forms prescribed by the department.

**20.9(3) Record keeping and retention.** The grantee shall retain all financial records, supporting documents and other records pertinent to the grant project for two years after closeout.

**20.9(4) On-site evaluations.** The department may conduct on-site evaluations of proposed projects.

**20.9(5) Amendments to cost-share agreements.** Any substantive change to a cost-share agreement shall be considered an amendment. Changes include time extensions and significant alteration of the funded project that changes the scope, location, objectives or scale of the approved project. Amendments must be requested in writing by the grantee and are not considered valid until approved by the department.

**781—20.10(82GA,SF2432) Matching funds requirement.** An eligible applicant shall provide matching funds of \$1 of nonstate moneys for every \$2 received from the department. The nonfinancial support included in the matching funds shall not exceed 35 percent.

TREASURER OF STATE[781](cont'd)

**781—20.11(82GA,SF2432) Noncompliance.** If the department finds that a grantee is not in compliance with the requirements of this program, the grantee will be required to refund to the state the grant award amount. Reasons for a finding of noncompliance include, but are not limited to, a finding that the grantee is using program funds for unauthorized activities, has failed to complete the approved project in a timely manner, or has failed to comply with the grant agreement.

**781—20.12(82GA,SF2432) Forms.** Appropriate forms must be completed in paper or online (whichever is applicable). Current forms are available online at [www.treasurer.state.ia.us](http://www.treasurer.state.ia.us). The department may from time to time provide additional forms for use by participants in connection with actions involving the fairgrounds infrastructure grant program and will make those forms available online and in paper format.

These rules are intended to implement 2008 Iowa Acts, Senate File 2432, sections 43 and 44.

## USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph “a,” the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

December 1, 2007 — December 31, 2007	6.50%
January 1, 2008 — January 31, 2008	6.25%
February 1, 2008 — February 29, 2008	6.00%
March 1, 2008 — March 31, 2008	5.75%
April 1, 2008 — April 30, 2008	5.75%
May 1, 2008 — May 31, 2008	5.50%
June 1, 2008 — June 30, 2008	5.75%
July 1, 2008 — July 31, 2008	6.00%
August 1, 2008 — August 31, 2008	6.00%
September 1, 2008 — September 30, 2008	6.00%
October 1, 2008 — October 31, 2008	6.00%
November 1, 2008 — November 30, 2008	5.75%
December 1, 2008 — December 31, 2008	5.75%

**ARC 7388B****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

This amendment expands Medicaid coverage to children with disabilities who have family income or resources that are too high for eligibility for SSI-related Medicaid. This expansion takes advantage of the opportunity offered by the Family Opportunity Act, Section 6062 of the Deficit Reduction Act of 2005, Public Law 106-170. The Iowa General Assembly authorized this expansion in 2007 Iowa Acts, chapter 218, section 124, and 2008 Iowa Acts, House File 2539, section 55. The Department estimates that about 200 Iowa children may qualify for this coverage.

This amendment does not provide for waivers in specified situations because the amendment confers a benefit and because federal requirements do not allow for waiver of the eligibility requirements. The Department has a general rule at 441—1.8(17A,217) on procedures for requesting an exception to policy when members feel they have special situations that need to be evaluated on an individual basis.

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on September 24, 2008, as **ARC 7208B**. The Department received no comments on the Notice of Intended Action.

The Department has made one change to the amendment as published under Notice of Intended Action. The following sentence has been added to subparagraph 75.1(43)"d"(2): "A person who receives medically needy coverage with a spenddown or limited benefits such as Medicare savings programs or family planning services only is not considered to be "receiving Medicaid" for the purposes of subparagraph (1)."

The Council on Human Services adopted this amendment on November 12, 2008.

The Department finds that this amendment confers a benefit on the children affected by allowing them to qualify for Medicaid coverage. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of this amendment is waived.

This amendment is intended to implement Iowa Code section 249A.3 as amended by 2007 Iowa Acts, chapter 218, section 124.

This amendment shall become effective on January 1, 2009.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this amendment [75.1(43)] is being omitted. With the exception of the change noted above, this amendment is identical to that published under Notice as **ARC 7208B**, IAB 9/24/08.

[Filed Emergency After Notice 11/12/08, effective 1/1/09]

[Published 12/3/08]

[For replacement pages for IAC, see IAC Supplement 12/3/08.]

**ARC 7396B****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Iowa Administrative Code.

These amendments restore Medicaid coverage of periodontal and endodontic dental services, including posts, cores, and crowns, for members 21 years of age or older. This coverage was eliminated in 2002.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

Periodontal disease and endodontic disease are infectious diseases that, if left untreated, may result in other health complications. They are the only infectious diseases for which Iowa Medicaid does not cover treatment. Studies have shown higher medical costs for patients with chronic medical conditions who have periodontal disease. In state fiscal year 2008, the Department received 208 requests for exceptions to policy for these services and approved 177 of them (85 percent). Reasons for approval included pregnancy, diabetes, organ transplants, heart disease, lung disease, severe or profound mental retardation, and physical disabilities.

The Department has determined that it is more cost-effective in the long term to treat these infectious diseases and thereby minimize other health complications.

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Notice of Intended Action on the amendment was published in the Iowa Administrative Bulletin on September 10, 2008, as **ARC 7137B**. The Department received one comment on the Notice of Intended Action, which was in support of the amendment.

The Department has added to the amendment published under Notice of Intended Action several technical changes to update terminology in other subrules on dental coverage.

The Council on Human Services adopted these amendments on November 12, 2008.

The Department finds that these amendments confer a benefit on adult Medicaid members by allowing payment for needed medical treatment. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of these amendments is waived.

These amendments are intended to implement Iowa Code section 249A.4.

These amendments became effective on December 1, 2008.

The following amendments are adopted.

ITEM 1. Amend paragraph **78.4(3)“d”** as follows:

*d.* Two laboratory-fabricated crowns using nonprecious materials, other than stainless steel, are payable per ~~patient~~ member in a 12-month period. Additional laboratory-fabricated crowns using nonprecious materials, other than stainless steel, are payable when prior authorization has been obtained. Noble metals are payable for crowns when ~~recipients~~ members are allergic to all other restorative materials. Stainless steel crowns are payable when a more conservative procedure would not be serviceable. (Cross-reference 78.28(2)“e”)

ITEM 2. Strike “recipient” and “recipients” wherever they appear in paragraphs **78.4(7)“c,” “d”** and **“e”** and insert “member” or “members” in lieu thereof.

ITEM 3. Amend subrule 78.4(14) as follows:

**78.4(14)** *Services to ~~adults~~ members 21 years of age ~~and or~~ and older. ~~Effective May 10, 2002, the following dental services~~ Orthodontic procedures are not covered for ~~adults~~ members 21 years of age ~~and or~~ and older:*

*a.* ~~—Crowns, posts, and cores on anterior teeth that have not received endodontic treatment and on posterior teeth.~~

*b.* ~~—Periodontal services.~~

*c.* ~~—Endodontic services on posterior teeth.~~

*d.* ~~—Orthodontic procedures.~~

[Filed Emergency After Notice 11/12/08, effective 12/1/08]

[Published 12/3/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/3/08.

**ARC 7398B****CORRECTIONS DEPARTMENT[201]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 904.108, the Department of Corrections hereby adopts amendments to Chapter 20, "Institutions and Administration," Iowa Administrative Code.

The purpose of these amendments is to update the Department's policy numbers, clarify policies and procedures, and add an additional means of sending money to an offender's account.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 24, 2008, as **ARC 7184B**. A public hearing was held on October 14, 2008, from 11 a.m. to 1 p.m. in the First Floor Conference Room of the Department of Corrections. One entity appeared at the hearing and its concerns were addressed.

One change has been made from the Notice of Intended Action to change the word "visits" to "tours" in subrule 20.8(2) in order to clarify that persons under 18 are not allowed to tour maximum security prisons. The subrule now reads as follows:

**"20.8(2)** Persons under 18 years of age may only visit with prior approval of the warden, superintendent, or designee, and shall be accompanied by a responsible adult. An adult shall be in charge of no more than four children. Persons under 18 years of age shall not be allowed to make institutional tours of maximum security prisons."

These amendments were approved during the November 7, 2008, meeting of the Board of Corrections.

These amendments will become effective on January 7, 2009.

These amendments are intended to implement Iowa Code section 904.108.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 20] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 7184B**, IAB 9/24/08.

[Filed 11/12/08, effective 1/7/09]

[Published 12/3/08]

[For replacement pages for IAC, see IAC Supplement 12/3/08.]

**ARC 7376B****ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]****Adopted and Filed Without Notice**

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

Iowa Code section 68A.302 limits the ability of candidates to use their campaign funds. Campaign funds are permitted to be used for joining a service organization so long as the sole purpose for doing so is to enhance the candidate's candidacy. The statute also requires the Board to adopt rules listing the Board's permissible and impermissible uses of campaign funds. The amendment reflects the statutory requirement that using campaign funds for a membership in a service organization must be for the sole purpose of enhancing the candidate's candidacy.

Pursuant to Iowa Code section 17A.4(2), the Board finds that notice and public participation prior to the adoption of this amendment are impracticable, as it is desirable to have the Board's rules reflect current statutory requirements.

This amendment is intended to implement Iowa Code section 68A.302.

This amendment will become effective on January 7, 2009.

The following amendment is adopted.

## ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

Amend paragraph **4.25(1)“t”** as follows:

*t.* Membership in service organizations including a local chamber of commerce that the candidate joins solely for the purpose of enhancing the candidate's candidacy.

[Filed Without Notice 11/11/08, effective 1/7/09]

[Published 12/3/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/3/08.

**ARC 7379B**

**ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]****Adopted and Filed Without Notice**

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

Iowa Code section 68A.503 prohibits certain persons from making campaign contributions to certain types of campaign committees. Iowa Code section 68A.102(10)“b”(2) exempts from the definition of “contribution” refreshments served at a campaign function when the cost of the refreshments is \$50 or less. The amendment reflects this exception in the definition of “contribution” and provides that persons who are prohibited contributors under Iowa Code section 68A.503 cannot furnish to certain committees refreshments that cost in excess of \$50.

Pursuant to Iowa Code section 17A.4(2), the Board finds that notice and public participation prior to the adoption of this amendment are impracticable, as it is desirable to have the Board's rules reflect current statutory requirements.

This amendment is intended to implement Iowa Code section 68A.503.

This amendment will become effective on January 7, 2009.

The following amendment is adopted.

Amend subrule 4.44(4) as follows:

**4.44(4)** The furnishing of beverages and other refreshments that cost in excess of \$50 and that are not ordinarily available to the general public.

[Filed Without Notice 11/11/08, effective 1/7/09]

[Published 12/3/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/3/08.

**ARC 7385B**

**HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 65, "Food Assistance Program Administration," Iowa Administrative Code.

These amendments implement the Food, Conservation, and Energy Act of 2008 (also known as the Farm Bill). Provisions of this bill improve access to the Food Assistance program, promote efficiency of the program's operation, and simplify the program for more effective program administration. These amendments implement the following program improvements:

- Raise the minimum standard deduction that is subtracted from countable income and provide for annual inflation adjustments in future years. Effective October 1, 2008, the minimum deduction will increase from \$134 to \$144.

- Remove the cap on the dependent care deduction that is subtracted from countable income. Currently the maximum deduction is \$200 monthly for each child under the age of two and \$175 monthly for dependents aged two or older.



## HUMAN SERVICES DEPARTMENT[441](cont'd)

- Raise the minimum benefit amount for households of one or two persons from \$10 a month to 8 percent of the thrifty food plan for a household of one. The minimum benefit is estimated to be \$14 in federal fiscal year 2009, with adjustments for food inflation in later years.
- Exclude tax-deferred retirement accounts and tax-deferred education accounts from countable resources. Funds in these accounts will not make a household ineligible due to excess resources.
- Index the resource limit, currently a fixed amount, to provide for annual adjustments based on inflation. Based on the Congressional Budget Office's most recent inflation projections, the first increase in the resource limit is expected in federal fiscal year 2012 or later.
- Implement the state option of expanding simplified reporting to include households in which all adult members are elderly or disabled and have no earned income. This change moves all households that are currently subject to ten-day change reporting to the simplified reporting method.

Switching households that include seniors (aged 60 or older) and people with disabilities to simplified reporting reduces paperwork burdens on these households. Simplified reporting households are required to report only if their total gross income exceeds 130 percent of the federal poverty level for their household size or if the work hours of an able-bodied adult without dependents change to less than 20 hours per week, averaged monthly. Simplified reporting households have the option of reporting changes that may increase their benefits, and the Department is required to act on all reported changes.

Certification periods of 12 months will be assigned to households in which all adult members are elderly or disabled and have no earned income. Certification periods of six months will be assigned to all other households. However, an interview is required only once a year. Certification periods shorter than 6 or 12 months may be assigned to align the recertification date to the FIP or medical assistance review date.

The Food Assistance Interim Report (FAIR) is being eliminated. Currently, households that are subject to simplified reporting must complete a FAIR in the sixth month of the certification period and a Review/Recertification Eligibility Document (RRED) every 12 months. With these amendments, these households will continue to complete a form every six months but the form will be the RRED each time.

These amendments do not provide for waivers in specified situations. The Department does not have authority to waive federal law or regulation.

These amendments were previously Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on September 10, 2008, as **ARC 7119B**. Notice of Intended Action to solicit comments on these amendments was published in the Iowa Administrative Bulletin on the same date as **ARC 7120B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action and Adopted and Filed Emergency.

The Council on Human Services adopted these amendments on November 12, 2008.

These amendments are intended to implement Iowa Code section 234.12.

These amendments shall become effective January 7, 2009, at which time the Adopted and Filed Emergency amendments are rescinded.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 65] is being omitted. These amendments are identical to those published under Notice as **ARC 7120B** and Adopted and Filed Emergency as **ARC 7119B**, IAB 9/10/08.

[Filed 11/12/08, effective 1/7/09]

[Published 12/3/08]

[For replacement pages for IAC, see IAC Supplement 12/3/08.]

**ARC 7386B****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

These amendments change the rule that allows children in court-approved subsidized guardianship homes to receive state-funded medical assistance coverage to:

- Limit this coverage group to children for whom Iowa has financial responsibility, as originally intended;
- Remove the upper age limit for consistency with the subsidy program;
- Provide eligibility for children who leave Iowa if they are not eligible for medical assistance through their new state of residence; and
- Clarify that ineligibility under other coverage groups or in another state must be due to substantive eligibility requirements, not due to a failure to provide information or to comply with other procedural requirements.

The amendments also provide that income from the guardianship subsidy is exempt both as income and as a resource. This change is consistent with the way foster care payments are handled and will allow many children in the adoption subsidy program and perhaps other family members to qualify for federally funded Medicaid coverage.

These amendments do not provide for waivers in specified situations because the exemption of subsidized guardianship payments, the removal of the age limit, and the provision for children who leave the state confer benefits. The provision that excludes children for whom Iowa does not have financial responsibility and who are ineligible under other coverage groups or in other states only because of a failure to comply with procedural requirements does not provide for waivers because all such cases should be treated the same. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on August 13, 2008, as **ARC 7059B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on November 12, 2008.

These amendments are intended to implement Iowa Code section 249A.3.

These amendments shall become effective on February 1, 2009.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [75.1(11), 75.57(6)“s”] is being omitted. These amendments are identical to those published under Notice as **ARC 7059B**, IAB 8/13/08.

[Filed 11/12/08, effective 2/1/09]

[Published 12/3/08]

[For replacement pages for IAC, see IAC Supplement 12/3/08.]

**ARC 7394B****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” and Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Iowa Administrative Code.

These amendments modify the rules for provision of case management services in screening centers, maternal health centers, local education agencies, and infant and toddler (Early ACCESS) programs

## HUMAN SERVICES DEPARTMENT[441](cont'd)

to comply with federal regulations on targeted case management published at 74 Fed. Reg. 68077-01. Portions of these regulations are subject to a moratorium until April 1, 2009, pursuant to Public Law 110-252, Section 7001(a). But absent further action, all state Medicaid programs will be required to be in compliance with all provisions of the federal regulations beginning April 1, 2009.

The federal regulations standardize the definition of case management, require a comprehensive assessment and plan of care, limit Medicaid coverage of case management services to one case manager per member, and establish standards for freedom of choice of providers, monitoring, and service documentation.

These amendments remove the care coordination components from the service descriptions for the Early and Periodic Screening, Diagnosis, and Treatment Program (Care for Kids) as provided by physicians, screening centers, rural health clinics, maternal health centers, and federally qualified health centers. An interagency agreement will be implemented between the Iowa Departments of Public Health and Human Services to replace these services. There will be increased costs for the administration by the Department of Public Health, but significantly less cost than if the additional case management activities required by federal regulation were provided by local maternal and child health centers funded under Title V of the Social Security Act.

The service description for infant and toddler programs, which serve children with disabilities from birth to 36 months of age, is modified to meet the federal requirements for targeted case management services. Services that are educational in nature and that are an integral part or an extension of direct services are excluded. Service requirements include assessment of the child's needs, development of a plan of care, contact with the child and family, referral, monitoring, and record keeping.

Because, under the federal regulations, Medicaid will cover only one case manager, a family whose child is also eligible for case management for people with mental retardation, chronic mental illness, or developmental disabilities under 441—Chapter 90 must choose which case management provider the family will use. If the family chooses case management under Chapter 90, the Infant and Toddler Program cannot be paid for providing case management services. Similarly, a child living in a medical institution cannot receive any other case management services, since the institution is responsible for case management.

Changes are also proposed to clarify the policies on prenatal risk assessments and administration of vaccines. A second risk assessment is not required if the first assessment indicated a high-risk pregnancy. Medicaid will not reimburse a provider for the cost of a vaccine that is available under the federal Vaccines for Children program administered by the Department of Public Health, but administration of vaccines is a covered service.

These amendments also make numerous technical changes to the rules affected by the federal regulations as well as other related rules to update terminology and meet formatting standards.

These amendments do not provide for waivers in specified situations because the federal regulations make no provision for waivers.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on September 24, 2008, as **ARC 7206B**. The Department received no comments on the Notice of Intended Action.

The Department has made one change to the amendments as published under Notice of Intended Action: Language has been added to new subparagraph 78.49(2)“b”(1) to allow case management to be provided for a limited period to children about to be discharged from a medical institution. Services may be provided in the last 14 days of the child's stay if the stay has been less than 180 days. Children who have been in an institution for 180 days or more may receive case management services in the 60 days before discharge.

The Council on Human Services adopted these amendments on November 12, 2008.

These amendments are intended to implement Iowa Code section 249A.4.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments shall become effective on February 1, 2009.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 77, 78] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 7206B**, IAB 9/24/08.

[Filed 11/12/08, effective 2/1/09]

[Published 12/3/08]

[For replacement pages for IAC, see IAC Supplement 12/3/08.]

**ARC 7397B****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services amends Chapter 150, "Purchase of Service," Iowa Administrative Code.

These amendments:

- Change Department practice to negotiate Iowa donation of funds contracts directly with the donors under the Accountable Government Act, Iowa Code chapter 8E, instead of using the current contract form and procedures. All requirements and restrictions previously outlined in rule will be conditions of the individual contracts.

- Eliminate reference to the Provider Advisory Committee, as the Committee no longer exists.

The Department rarely receives donated funds. For the past few years, funds have been donated only to Department facilities.

These amendments do not provide for waivers in specified situations because the contract provisions to be implemented are mandated by the Accountable Government Act, with no provision for exceptions.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on September 24, 2008, as **ARC 7173B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on November 12, 2008.

These amendments are intended to implement Iowa Code section 234.6.

These amendments shall become effective on February 1, 2009.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 150] is being omitted. These amendments are identical to those published under Notice as **ARC 7173B**, IAB 9/24/08.

[Filed 11/12/08, effective 2/1/09]

[Published 12/3/08]

[For replacement pages for IAC, see IAC Supplement 12/3/08.]

**ARC 7399B****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 225C.36, the Department of Human Services amends Chapter 184, "Individual and Family Direct Support," Iowa Administrative Code.

This amendment conforms the rules of the Family Support Subsidy Program to legislative changes enacted in 2008 Iowa Acts, Senate File 2425, section 114. The legislation provides that when a family support subsidy is terminated because the disabled person reaches the age of 18, the subsidy shall not

## HUMAN SERVICES DEPARTMENT[441](cont'd)

be continued while the person's parent or guardian appeals the determination. In many situations, Department rules do allow assistance to be continued after a negative action, pending an appeal decision settling a dispute about the Department's findings of fact or conclusions of law. Under this amendment, the policy on continuation of assistance will not apply in this specific circumstance.

This amendment does not provide for waivers in specified situations because the Department does not have the authority to waive statutory provisions.

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on August 27, 2008, as **ARC 7109B**. The Department received no comments on the Notice of Intended Action. This amendment is identical to that published under Notice of Intended Action.

The Council on Human Services adopted this amendment on November 12, 2008.

This amendment is intended to implement Iowa Code section 225C.40 as amended by 2008 Iowa Acts, Senate File 2425, section 114.

This amendment shall become effective on February 1, 2009.

The following amendment is adopted.

Amend rule 441—184.9(225C) as follows:

**441—184.9(225C) Appeals.** The parent or legal guardian of the child may appeal a denial of an application or termination of the subsidy payment pursuant to 441—Chapter 7. EXCEPTION: When the parent or guardian appeals the termination of benefits for a child who has attained the age of 18 or who will attain the age of 18 during the appeal, subsidy payments shall not be paid during the appeal after the child has turned 18. If there is a final decision in favor of the parent or legal guardian, subsidy payments shall be made consistent with the ruling.

[Filed 11/12/08, effective 2/1/09]

[Published 12/3/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/3/08.

**ARC 7403B**

**IOWA FINANCE AUTHORITY[265]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 17A.3(1)“b” and Iowa Code Supplement section 16.5(1)“r,” the Iowa Finance Authority hereby amends Chapter 9, “Title Guaranty Division,” Iowa Administrative Code.

This amendment replaces current title plant waiver subrules with new subrules. This amendment updates and clarifies the existing administrative rules needed to administer Iowa Code Supplement section 16.91(5), and conforms the rules to correspond to Iowa Code Supplement section 16.91(5) as amended by 2008 Iowa Acts, Senate File 2320, which was signed by the Governor and became effective on July 1, 2008. This amendment also updates the rules generally.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 27, 2008, as **ARC 7115B**. The Authority received written comments on the proposed amendment. The Authority did not make any changes to the amendment based upon such public comment.

This amendment is intended to implement Iowa Code Supplement section 16.5(1)“r,” Iowa Code sections 17A.12 and 17A.16, and Iowa Code Supplement section 16.91(5) as amended by 2008 Iowa Acts, Senate File 2320.

IOWA FINANCE AUTHORITY[265](cont'd)

This amendment will become effective January 7, 2009.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this amendment [9.7] is being omitted. This amendment is identical to that published under Notice as **ARC 7115B**, IAB 8/27/08.

[Filed 11/12/08, effective 1/7/09]

[Published 12/3/08]

[For replacement pages for IAC, see IAC Supplement 12/3/08.]

**ARC 7404B**

## **IOWA FINANCE AUTHORITY[265]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3(1)“b” and 16.181 and Iowa Code Supplement section 16.5(1)“r,” the Iowa Finance Authority hereby amends Chapter 19, “State Housing Trust Fund,” Iowa Administrative Code.

The purpose of this amendment is to implement Iowa Code Supplement section 16.5(1)“r” and Iowa Code section 16.181 by adopting and incorporating by reference the Iowa Finance Authority State Housing Trust Fund Allocation Plan for the Project-Based Trust Fund Program dated September 2008 (“New Plan”) in place of the Iowa Finance Authority State Housing Trust Fund 2008 Allocation Plan for the Project-Based Housing Trust Fund Program.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 8, 2008, as **ARC 7257B**. The Authority received public comments on the New Plan. The Authority did not make any changes to the amendment or the New Plan based upon such public comment.

This amendment is intended to implement Iowa Code Supplement section 16.5(1)“r” and Iowa Code section 16.181.

The Iowa Finance Authority adopted this amendment on November 12, 2008.

This amendment will become effective on January 7, 2009.

The following amendment is adopted.

Amend rule 265—19.1(16) as follows:

**265—19.1(16) Trust fund allocation plans.** The trust fund allocation plan entitled Iowa Finance Authority State Housing Trust Fund Allocation Plan for the Local Housing Trust Fund Program dated May 2008 shall be the allocation plan for the award, pursuant to the local housing trust fund program, of funds held within the state housing trust fund established in Iowa Code section 16.181. The trust fund allocation plan entitled Iowa Finance Authority State Housing Trust Fund ~~2008~~ Allocation Plan for the Project-Based Housing Program dated September 2008 shall be the allocation plan for the distribution, pursuant to the project-based housing program, of funds held within the state housing trust fund. The trust fund allocation plans for the local housing trust fund program and the project-based housing program include the plans, applications, and application instructions. The trust fund allocation plans for the local housing trust fund program and the project-based housing program are incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2).

[Filed 11/12/08, effective 1/7/09]

[Published 12/3/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/3/08.

**ARC 7381B****IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 97B.4 and 97B.15, the Iowa Public Employees' Retirement System (IPERS) hereby amends Chapter 6, "Covered Wages," and Chapter 12, "Calculation of Monthly Retirement Benefits," Iowa Administrative Code.

IPERS adopts the following: an amendment to the definition of covered wages, relating to 2008 legislation, that removes bonuses and allowances from the definition; an amendment providing that even if no longer included in the definition of covered wages, noncovered wage payments such as bonuses and allowances will be counted toward the retired reemployed member earnings limit; and an amendment providing retired reemployed members with more flexibility in choosing the amount of death benefits they wish to receive with respect to the reemployment period.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 8, 2008, as **ARC 7262B**. A public hearing was held on October 28, 2008. No one attended the public hearing, and no written comments were received. These amendments are identical to those published under Notice.

There are no waiver provisions included in the amendments.

These amendments are intended to implement Iowa Code Supplement section 97B.4 as amended by 2008 Iowa Acts, Senate File 2424, and Iowa Code section 97B.15.

These amendments will become effective January 7, 2009.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [6.3, 12.8(4)] is being omitted. These amendments are identical to those published under Notice as **ARC 7262B**, IAB 10/8/08.

[Filed 11/12/08, effective 1/7/09]

[Published 12/3/08]

[For replacement pages for IAC, see IAC Supplement 12/3/08.]

**ARC 7389B****PUBLIC HEALTH DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 139A.8(8) and 139A.26(5), the Department of Public Health hereby amends Chapter 7, "Immunization and Immunization Education: Persons Attending Elementary or Secondary Schools, Licensed Child Care Centers, or Institutions of Higher Education," Iowa Administrative Code.

The rules in Chapter 7 describe immunization requirements for attendance at elementary or secondary schools or licensed child care centers and requirements for immunization education of students entering institutions of higher education.

These amendments clarify the definition of "certified medical assistant"; further explain the use of medical and religious exemptions; update the immunization requirements to more accurately reflect the recommendations of the Advisory Committee on Immunization Practices (ACIP) and to include the required immunization for invasive pneumococcal disease for children enrolling in licensed child care centers; and set forth guidelines for completing the certificate of immunization and provisional certificate of immunization, including details as to who is required to sign a provisional certificate. The amendments also remove the requirement that a school or licensed child care center offer to meet with a child's parents before the child's provisional enrollment expires and replace it with the requirement that the school or licensed child care center provide a written explanation of provisional enrollment rules to the parents. The amendments clarify the need for a second provisional enrollment certificate whenever a provisional certificate expires because of the need to adhere to "minimum interval" requirements. Finally,

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

the amendments clarify rules concerning who may provide and who may receive immunization record information.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 16, 2008, as **ARC 6974B**.

A public hearing was held on August 7, 2008, to receive comments on the proposed amendments. The Department received four comments: three written comments and one oral comment at the public hearing. All of the comments related to the parental signature on the provisional certificate of immunization and the rules for explanation of provisional enrollment to the parents. The Department has decided to remove the requirement for parental signature as well as the requirement that the school notify parents of the provisional enrollment rules ten days prior to the expiration of the certificate. Instead, the Department will require the provider who signs the provisional certificate to ensure that the provider has provided education to the parent on the rules regarding provisional enrollment of the student. The Department has also adjusted the wording of the requirement for vaccination against invasive pneumococcal disease in the list of immunizations required for applicants attending licensed child care centers to further support recommendations by the Centers for Disease Control and Prevention and the American Committee on Immunization Practices.

These amendments were adopted by the State Board of Health on November 12, 2008.

These amendments will become effective January 7, 2009.

These amendments are intended to implement Iowa Code sections 139A.8 and 139A.26.

The following amendments are adopted.

ITEM 1. Amend rule **641—7.1(139A)**, definitions of “Certified medical assistant” and “Signature,” as follows:

“*Certified medical assistant*” means a person who is certified to practice as a certified medical assistant following completion of a postsecondary medical assistant program accredited by the Commission on Accreditation of Allied Health Education Programs or the Accrediting Bureau of Health Education Schools and successful completion of the certification examination and who is directed by a supervising physician, physician assistant, or nurse practitioner.

“*Signature*” means an original signature, or the authorized use of a stamped signature, or electronic signature of a physician, physician assistant, or nurse.

ITEM 2. Adopt the following **new** definition in rule **641—7.1(139A)**:

“*Student*” means an individual who is enrolled in a licensed child care center, elementary school or secondary school.

ITEM 3. Amend rule 641—7.3(139A) as follows:

**641—7.3(139A) Persons excluded.** Exclusions to these rules are permitted on an individual basis for medical and religious reasons. Applicants approved for medical or religious exemptions shall submit to the admitting official a valid Iowa department of public health certificate of immunization exemption.

**7.3(1)** To be valid, a certificate of immunization exemption for medical reasons shall contain, at a minimum, the applicant’s last name, first name, and date of birth, the vaccine(s) exempted, and an expiration date (if applicable) and shall bear the signature of a physician, nurse practitioner, or physician assistant. A medical exemption may be granted to an applicant when, in the opinion of a physician, nurse practitioner, or physician assistant, ~~the~~

a. The required immunizations would be injurious to the health and well-being of the applicant or any member of the applicant’s family or household. ~~A~~ In this circumstance, a medical exemption may apply to a specific vaccine(s) or all required immunizations vaccines. ~~A certificate of immunization exemption for medical reasons is valid only when signed by a physician, nurse practitioner, or physician assistant.~~ If, in the opinion of the physician, nurse practitioner, or physician assistant issuing the medical exemption, the exemption should be terminated or reviewed at a future date, an expiration date shall be recorded on the certificate of immunization exemption; or

b. Administration of the required vaccine would violate minimum interval spacing. In this circumstance, an exemption shall apply only to an applicant who has not received prior doses of the



PUBLIC HEALTH DEPARTMENT[641](cont'd)

exempted vaccine. An expiration date, not to exceed 60 calendar days, and the name of the vaccine exempted shall be recorded on the certificate of exemption.

**7.3(2)** A religious exemption may be granted to an applicant if immunization conflicts with a genuine and sincere religious belief.

a. A To be valid, a certificate of immunization exemption for religious reasons shall be signed by contain, at a minimum, the applicant's last name, first name, and date of birth and shall bear the signature of the applicant or, if the applicant is a minor, by of the applicant's parent or guardian or legally authorized representative and shall attest that immunization conflicts with a genuine and sincere religious belief and that the belief is in fact religious, and not based merely on philosophical, scientific, moral, personal, or medical opposition to immunizations.

b. The certificate of immunization exemption for religious reasons is valid only when notarized.

**7.3(3)** Religious Medical and religious exemptions shall become null and void during under this rule do not apply in times of emergency or epidemic as determined by the state board of health and declared by the director of public health.

ITEM 4. Rescind subrule 7.4(1) and adopt the following **new** subrule in lieu thereof:

**7.4(1)** Applicants enrolled or attempting to enroll shall have received the following vaccines in accordance with the doses and age requirements below:

## IMMUNIZATION REQUIREMENTS

Applicants enrolled or attempting to enroll shall have received the following vaccines in accordance with the doses and age requirements listed below. If, at any time, the age of the child is between the listed ages, the child must have received the number of doses in the "Total Doses Required" column.

Institution	Age	Vaccine	Total Doses Required
Licensed Child Care Center	Less than 4 months of age	This is not a recommended administration schedule, but contains the minimum requirements for participation in licensed child care. <b>Routine vaccination begins at 2 months of age.</b>	
	4 months through 5 months of age	Diphtheria/Tetanus/Pertussis	1 dose
		Polio	1 dose
		<i>haemophilus influenzae</i> type B	1 dose
		Pneumococcal	1 dose
	6 months through 11 months of age	Diphtheria/Tetanus/Pertussis	2 doses
		Polio	2 doses
		<i>haemophilus influenzae</i> type B	2 doses
		Pneumococcal	2 doses
	12 months through 18 months of age	Diphtheria/Tetanus/Pertussis	3 doses
		Polio	2 doses
		<i>haemophilus influenzae</i> type B	2 doses; or 1 dose received when the applicant is 15 months of age or older.
		Pneumococcal	3 doses if the applicant received 1 or 2 doses before 12 months of age; or 2 doses if the applicant has not received any previous doses or has received 1 dose on or after 12 months of age.
	19 months through 23 months of age	Diphtheria/Tetanus/Pertussis	4 doses
		Polio	3 doses
		<i>haemophilus influenzae</i> type B	3 doses, with the final dose in the series received on or after 12 months of age, or 1 dose received when the applicant is 15 months of age or older.
		Pneumococcal	4 doses; or 3 doses if the applicant received 1 or 2 doses before 12 months of age; or 2 doses if the applicant has not received any previous doses or has received 1 dose on or after 12 months of age.
		Measles/Rubella <sup>1</sup>	1 dose of measles/rubella-containing vaccine received on or after 12 months of age; or the applicant demonstrates a positive antibody test for measles and rubella from a U.S. laboratory.
		Varicella	1 dose received on or after 12 months of age if the applicant was born on or after September 15, 1997, unless the applicant has had a reliable history of natural disease.
	24 months and older	Diphtheria/Tetanus/Pertussis	4 doses
		Polio	3 doses
		<i>haemophilus influenzae</i> type B	3 doses, with the final dose in the series received on or after 12 months of age; or 1 dose received when the applicant is 15 months of age or older. Hib vaccine is not indicated for persons 60 months of age or older.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

		Pneumococcal	4 doses if the applicant received 3 doses before 12 months of age; or 3 doses if the applicant received 2 doses before 12 months of age; or 2 doses if the applicant received 1 dose before 12 months of age or received 1 dose between 12 and 23 months of age; or 1 dose if no doses had been received prior to 24 months of age. Pneumococcal vaccine is not indicated for persons 60 months of age or older.
		Measles/Rubella <sup>1</sup>	1 dose of measles/rubella-containing vaccine received on or after 12 months of age; or the applicant demonstrates a positive antibody test for measles and rubella from a U.S. laboratory.
		Varicella	1 dose received on or after 12 months of age if the applicant was born on or after September 15, 1997, unless the applicant has had a reliable history of natural disease.

Applicants enrolled or attempting to enroll shall have received the following vaccines in accordance with the doses and age requirements listed below. If, at any time, the age of the child is between the listed ages, the child must have received the number of doses in the "Total Doses Required" column.

Institution	Age	Vaccine	Total Doses Required
Elementary or Secondary School (K-12)	4 years of age and older	Diphtheria/Tetanus/Pertussis <sup>2, 3, 4</sup>	3 doses, with at least 1 dose of diphtheria/tetanus/pertussis-containing vaccine received on or after 4 years of age if the applicant was born on or before September 15, 2000; or 4 doses, with at least 1 dose of diphtheria/tetanus/pertussis-containing vaccine received on or after 4 years of age if the applicant was born after September 15, 2000, but before September 15, 2003; or 5 doses with at least 1 dose of diphtheria/tetanus/pertussis-containing vaccine received on or after 4 years of age if the applicant was born on or after September 15, 2003. DTaP is not indicated for persons 7 years of age and older; therefore, tetanus- and diphtheria-containing vaccine should be used.
		Polio <sup>5, 6</sup>	3 doses, with at least 1 dose received on or after 4 years of age if the applicant was born on or before September 15, 2003; or 4 doses, with at least 1 dose received on or after 4 years of age if the applicant was born after September 15, 2003.
		Measles/Rubella <sup>1</sup>	2 doses of measles/rubella-containing vaccine; the first dose shall have been received on or after 12 months of age; the second dose shall have been received no less than 28 days after the first dose; or the applicant demonstrates a positive antibody test for measles and rubella from a U.S. laboratory.
		Hepatitis B	3 doses if the applicant was born on or after July 1, 1994.
		Varicella <sup>7</sup>	1 dose received on or after 12 months of age if the applicant was born on or after September 15, 1997, but born before September 15, 2003, unless the applicant has had a reliable history of natural disease; or 2 doses received on or after 12 months of age if the applicant was born on or after September 15, 2003, unless the applicant has a reliable history of natural disease.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

- <sup>1</sup> Mumps vaccine may be included in measles/rubella-containing vaccine.
- <sup>2</sup> The 5<sup>th</sup> dose of DTaP is not necessary if the 4<sup>th</sup> dose was administered on or after 4 years of age.
- <sup>3</sup> Applicants 7 through 18 years of age who received their 1<sup>st</sup> dose of diphtheria/tetanus/pertussis-containing vaccine before 12 months of age should receive a total of 4 doses, with one of those doses administered on or after 4 years of age.
- <sup>4</sup> Applicants 7 through 18 years of age who received their 1<sup>st</sup> dose of diphtheria/tetanus/pertussis-containing vaccine at 12 months of age or older should receive a total of 3 doses, with one of those doses administered on or after 4 years of age.
- <sup>5</sup> If an applicant, born after September 15, 2003, received an all-inactivated poliovirus (IPV) or all-oral poliovirus (OPV) series, a 4<sup>th</sup> dose is not necessary if the 3<sup>rd</sup> dose was administered on or after 4 years of age. If 4 polio doses are administered at greater than 6 weeks of age and the doses are all separated by at least 4-week intervals, a 5<sup>th</sup> dose is not needed, even if the 4<sup>th</sup> dose was administered before 4 years of age.
- <sup>6</sup> If both OPV and IPV were administered as part of the series, a total of 4 doses are required, regardless of the applicant's current age.
- <sup>7</sup> Administer 2 doses of varicella vaccine, at least 3 months apart, to applicants less than 13 years of age. Do not repeat the 2<sup>nd</sup> dose if administered 28 days or greater from the 1<sup>st</sup> dose. Administer 2 doses of varicella vaccine to applicants 13 years of age or older at least 4 weeks apart. The minimum interval between the 1<sup>st</sup> and 2<sup>nd</sup> dose of varicella for an applicant 13 years of age or older is 28 days.

ITEM 5. Amend subrule 7.4(2) as follows:

**7.4(2)** Vaccine doses administered ≤ less than or equal to 4 days before the minimum interval or age shall be counted as valid. Doses administered ≥ greater than or equal to 5 days earlier than the minimum interval or age shall not be counted as valid doses and shall be repeated as ~~age~~ appropriate.

ITEM 6. Amend rule 641—7.6(139A) as follows:

**641—7.6(139A) Proof of immunization.**

**7.6(1)** ~~Applicants, or their parents or guardians, shall submit a~~ A valid Iowa department of public health certificate of immunization shall be submitted by the applicant or, if the applicant is a minor, by the applicant's parent or guardian to the admitting official of the school or licensed child care center in which the applicant wishes to enroll. To be valid, the certificate shall be the certificate of immunization issued ~~and provided~~ by the department, a computer-generated copy from the immunization registry, or a certificate of immunization which has been approved in writing by the department ~~and shall be signed by~~. The certificate shall contain, at a minimum, the applicant's last name, first name, and date of birth, the vaccine(s) administered, the date(s) given, and the signature of a physician, a physician assistant, a nurse, or a certified medical assistant ~~directed to sign by a supervising physician, physician assistant, or nurse practitioner~~. A faxed copy, photocopy, or electronic copy of the valid certificate is acceptable. The judgment of the adequacy of the applicant's immunization history should be based on records kept by the person signing the certificate of immunization ~~or on that person's~~ personal knowledge of the applicant's immunization history, or comparable immunization records from another person or agency, or an international certificate of vaccination, or the applicant's personal health records. If personal health records are used to make the judgment, the records shall ~~provide~~ include the vaccine(s) administered and the date given. Persons validating the certificate of immunization are not held responsible for the accuracy of the information used to validate the certificate of immunization if the information is from sources other than their own records or personal knowledge.

**7.6(2)** Persons wishing to enroll who do not have a valid Iowa department of public health certificate of immunization available to submit to the admitting official shall be referred to a physician, a physician assistant, a nurse, or a certified medical assistant ~~directed by a supervising physician, physician assistant, or nurse practitioner~~ to obtain a valid certificate.

ITEM 7. Amend subrule 7.7(1) as follows:

**7.7(1)** A valid Iowa department of public health provisional enrollment certificate shall be submitted by the applicant or, if the applicant is a minor, by the applicant's parent or guardian to the admitting official of the school or licensed child care center in which the applicant wishes to enroll. Applicants who have begun but not completed the required immunizations may be granted provisional enrollment. To qualify for provisional enrollment, applicants shall have received at least one dose of each of the required vaccines or be a transfer student from another school system. A transfer student is an applicant

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

seeking enrollment from one United States elementary or secondary school into another. ~~Applicants shall submit a valid Iowa department of public health provisional certificate of immunization to the admitting official of the school or licensed child care center in which the applicant wishes to be provisionally enrolled.~~ To be valid, the ~~provisional~~ certificate shall ~~be signed by~~ contain, at a minimum, the applicant's last name, first name, and date of birth, the vaccine(s) administered, the date(s) given, the remaining vaccine(s) required, the reason that the applicant qualifies for provisional enrollment, and the signature of a physician, a physician assistant, a nurse, or a certified medical assistant ~~directed to sign by a supervising physician, physician assistant, or nurse practitioner.~~ Persons validating the provisional certificate of immunization are not held responsible for the accuracy of the information used to validate the provisional certificate of immunization if the information is from sources other than their own records or personal knowledge. Persons signing the provisional certificate of immunization shall certify that they have informed the applicant or, if the applicant is a minor, the applicant's parent or guardian of the provisional enrollment requirements.

~~a. Any person wishing to be provisionally enrolled applicant seeking provisional enrollment who does not have a valid Iowa department of public health provisional certificate of immunization to submit to the admitting official shall be referred to a physician, a physician assistant, a nurse, or a certified medical assistant directed by a supervising physician, physician assistant, or nurse practitioner to obtain a valid certificate.~~

~~b. Reserved.~~

ITEM 8. Rescind and reserve subrule **7.7(4)**.

ITEM 9. Amend subrule 7.7(6) as follows:

**7.7(6)** If at the end of the provisional enrollment period the applicant has not completed the required immunizations due to minimum interval requirements, ~~the provisional enrollment may be extended if the applicant or parent or guardian submits another a new~~ Iowa department of public health provisional certificate of immunization shall be submitted to the admitting official. The admitting official must maintain all issued certificates of provisional immunization with the original provisional certificate until the applicant submits a certificate of immunization.

ITEM 10. Amend subrule 7.8(1) as follows:

**7.8(1)** It shall be the duty of the admitting official of a licensed child care center or elementary or secondary school to ensure that the admitting official has a valid Iowa department of public health certificate of immunization, certificate of immunization exemption, or provisional certificate of immunization on file for each ~~child enrolled student.~~ The admitting official shall ensure that the certificate be properly completed and include, at a minimum, last name, first name, date of birth, vaccine(s) administered, date(s) given, and validation by the appropriate party.

~~a. The admitting official shall keep the certificates on file in the school or licensed child care center in which the applicant student is enrolled and assist the applicant student or parent or guardian in the transfer of the certificate to another school or licensed child care center upon the transfer of the applicant student to another school or licensed child care center.~~

~~b. No change.~~

ITEM 11. Amend subrule 7.8(4) as follows:

**7.8(4)** The admitting official of an institution of higher education shall provide to the department of ~~education~~ public health by December 1 each year aggregate data regarding compliance with Iowa Code section 139A.26. The data shall be forwarded to the department within 30 days. The data shall include, but not be limited to, the total number of incoming postsecondary freshmen students living in a residence hall or dormitory who have:

~~a. to c. No change.~~

ITEM 12. Adopt the following new subparagraph **7.11(4)“a”(6)**:

(6) The admitting official of a licensed child care center, elementary school, or secondary school; or medical or health care providers providing continuity of care.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 13. Amend paragraph 7.11(4)“b” as follows:

b. Enrolled users shall not release immunization data obtained from the registry except to the person immunized, the parent or legal guardian of the person immunized, health records staff admitting officials of licensed child care centers and schools, medical or health care providers providing continuity of care, and other enrolled users of the registry.

ITEM 14. Amend rule 641—7.12(22) as follows:

**641—7.12(22) Release of immunization information.**

**7.12(1)** ~~Between a physician, a physician assistant, nurse, or a certified medical assistant directed by a supervising physician, physician assistant, or nurse practitioner and the elementary or secondary school or licensed child care center that the child student attends.~~ A physician, a physician assistant, a nurse, or a certified medical assistant ~~directed by a supervising physician, physician assistant, or nurse practitioner~~ shall disclose a student's immunization information, including the student's name, date of birth, and demographic information, the month, day, year and vaccine(s) administered, and clinic source and location, to an elementary or secondary school or a licensed child care center upon written or verbal request from the elementary or secondary school or licensed child care center. Written or verbal permission from a student or parent is not required to release this information to an elementary or secondary school or licensed child care center that the student attends.

**7.12(2)** ~~Among physicians, physician assistants, nurses, or certified medical assistants directed by a supervising physician, physician assistant, or nurse practitioner.~~ Immunization information, including the student's last name, first name, date of birth, and demographic information, the month, day, year and vaccine(s) administered, and clinic source and location, shall be provided by ~~one a~~ physician, physician assistant, nurse, or a certified medical assistant ~~directed by a supervising physician, physician assistant, or nurse practitioner~~ to another health care provider without written or verbal permission from the student, ~~or the parent or guardian.~~

**7.12(3)** Among an elementary school, secondary school, and licensed child care center that the student attends. An elementary school, secondary school, and licensed child care center shall disclose a student's immunization information, including the student's last name, first name, date of birth, and demographic information, the month, day, and year of vaccine(s) administered, and clinic source and location, to another elementary school, secondary school, and licensed child care center that the student attends. Written or verbal permission from a student, or if the student is a minor, the student's parent or guardian, is not required to release this information to an elementary school, secondary school, and licensed child care center that the student attends.

[Filed 11/12/08, effective 1/7/09]

[Published 12/3/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/3/08.

**ARC 7390B**

**PUBLIC HEALTH DEPARTMENT[641]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 714.16, the Department of Public Health hereby rescinds Chapter 14, “Residential Water Treatment Systems,” and adopts new Chapter 14, “Water Treatment Systems,” Iowa Administrative Code.

These rules describe the requirements for water treatment systems that are advertised or sold in Iowa and for which a claim is made that the system reduces health-related contaminants in drinking water. The rules also include the procedures and fees for the registration of water treatment systems.

A summary of the major changes from the rescinded rules follows.

Definitions for “ANSI,” “drinking water,” “maximum contaminant level” or “MCL,” “performance indication device” or “PID,” and “surrogate” are added.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

Definitions for “initial registration,” “performance testing” and “water treatment system” are revised. The term “health-related contaminant” has been changed to “contaminant,” and the definition has been revised.

The term “National Sanitation Foundation (NSF)” has been changed to “NSF,” and the definition has been revised.

The definition for “temporary registration” has been omitted.

Rule 641—14.4(714) has been rewritten to reference nationally recognized testing standards for water treatment systems and to clarify the submission and evaluation of testing protocols not specifically referenced in the rule. A minimum performance standard for water treatment systems was added. A requirement for retesting and submission of test data at least every five years has been added.

Rule 641—14.5(714) has been reorganized, and a fee has been added for review of third-party testing agencies. The information required for evaluation of an agency has been added with provisions for a simplified application if an agency is nationally accredited. An appeal process for disapproval, conditions under which resubmission might be required, and a revocation procedure and appeal process have been added.

Rule 641—14.6(714) (formerly rule 641—14.8(714)) deletes the provisions for temporary registration, lists the information required for an application to register a water treatment system with relaxed provisions for systems tested by a nationally recognized agency, increases the fees for initial and renewal registration and establishes penalties for late renewal applications, and establishes the expiration date for initial registrations.

Subrule 14.6(3) requires submission of information about changes to a water treatment system or its trade names and sets a fee for review of the changes.

Rule 641—14.7(714) (formerly rule 641—14.6(714)) allows performance data sheets to be in accordance with national standards and the policies of nationally recognized testing agencies.

Rule 641—14.9(714) requires that a water treatment system be registered before being sold in Iowa and that the performance data sheet and a consumer information booklet be given to the buyer before a sale is consummated. The rule prohibits false or deceptive claims and representations that a water treatment system is approved or endorsed by the state of Iowa.

Rule 641—14.11(714) (formerly rule 641—14.9(714)) has been amended to add criminal penalties as well as civil penalties.

Notice of Intended Action was published in the September 24, 2008, Iowa Administrative Bulletin as **ARC 7171B**. A public hearing was held on October 14, 2008. No public comment was received. These rules are identical to those published under Notice.

These rules were adopted by the State Board of Health on November 12, 2008.

These rules will become effective on January 7, 2009.

These rules are intended to implement Iowa Code chapter 714.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 14] is being omitted. These rules are identical to those published under Notice as **ARC 7171B**, IAB 9/24/08.

[Filed 11/12/08, effective 1/7/09]

[Published 12/3/08]

[For replacement pages for IAC, see IAC Supplement 12/3/08.]

**ARC 7391B**

**PUBLIC HEALTH DEPARTMENT[641]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 147A.4, the Department of Public Health hereby amends Chapter 131, “Emergency Medical Services Provider Education/Training/Certification,” Iowa Administrative Code.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

The rules in Chapter 131 describe the standards for the education, training, and certification of emergency medical providers and establish a standard of conduct for training programs, students, and providers. These proposed amendments update disciplinary rules for providers and eliminate the fee for retirement of an EMS certification.

Notice of Intended Action was published in the September 24, 2008, Iowa Administrative Bulletin as **ARC 7169B**. One comment was received neither clearly supporting nor opposing the changes. The adopted amendments are identical to those published under Notice.

These amendments were adopted by the State Board of Health on November 12, 2008.

These amendments are intended to implement Iowa Code chapter 147A.

These amendments will become effective on January 7, 2009.

The following amendments are adopted.

ITEM 1. Amend paragraph **131.4(3)“h”** as follows:

*h.* An individual may request an inactive or retired status for a certificate. The request must be made ~~to the department in writing by submitting a change of status request, available through the Iowa Department of Public Health, Bureau of EMS, Lucas State Office Building, Des Moines, Iowa 50319-0075, or the bureau of EMS Web site (www.idph.state.ia.us/ems).~~ A certification card reflecting the inactive or retired status may be issued to the individual for a fee of \$30. Reinstatement of an inactive or retired certificate shall be made pursuant to 131.4(3)“f.” A request for inactive or retired status, when accepted in connection with a disciplinary investigation or proceeding, has the same effect as an order of revocation.

ITEM 2. Rescind and reserve paragraph **131.4(8)“f.”**

ITEM 3. Amend paragraph **131.7(2)“u”** as follows:

*u.* Having certification to practice emergency medical care suspended or revoked, or having other disciplinary action taken by a licensing or certifying authority of this state or another state, territory or country. A ~~certified~~ copy of the record or order of suspension, revocation or disciplinary action is conclusive or prima facie evidence.

ITEM 4. Adopt the following new paragraph **131.7(2)“ab”**:

*ab.* Failure to respond within 30 days of receipt, unless otherwise specified, of communication from the department which was sent by registered or certified mail.

[Filed 11/12/08, effective 1/7/09]

[Published 12/3/08]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/3/08.

**ARC 7392B**

**PUBLIC HEALTH DEPARTMENT[641]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 147A.4, the Department of Public Health hereby amends Chapter 132, “Emergency Medical Service—Service Program Authorization,” Iowa Administrative Code.

The rules in Chapter 132 describe the standards for the authorization of EMS services. These amendments clarify definitions for air medical services, describe requirements for driver training and require that service providers notify the Department when employees are terminated for certain reasons.

Notice of Intended Action was published in the September 24, 2008, Iowa Administrative Bulletin as **ARC 7170B**. One comment was received neither clearly supporting nor opposing the changes. The adopted amendments are identical to those published under Notice.

These amendments were adopted by the State Board of Health on November 12, 2008.

These amendments are intended to implement Iowa Code chapter 147A.



## PUBLIC HEALTH DEPARTMENT[641](cont'd)

These amendments will become effective on January 7, 2009.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [132.1, 132.8] is being omitted. These amendments are identical to those published under Notice as **ARC 7170B**, IAB 9/24/08.

[Filed 11/12/08, effective 1/7/09]

[Published 12/3/08]

[For replacement pages for IAC, see IAC Supplement 12/3/08.]

**ARC 7393B****PUBLIC HEALTH DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of 2008 Iowa Acts, House File 2212, the Department of Public Health hereby adopts new Chapter 153, "Smokefree Air," Iowa Administrative Code.

The purpose of these rules is to implement the Smokefree Air Act as enacted by 2008 Iowa Acts, House File 2212.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 30, 2008, as **ARC 6990B**. In addition, these rules were simultaneously Adopted and Filed Emergency as **ARC 6989B**, effective July 1, 2008. A Regulatory Analysis was completed by the Department in response to a request from the Iowa Restaurant Association. The analysis was published in the Iowa Administrative Bulletin on September 10, 2008.

The Department held an extended comment period and conducted five hearings over the Iowa Communications Network that included five different originating sites and a total of 32 sites. A public comment form was available on the Iowa Smokefree Air Act Web site beginning June 2, 2008. Between June 2 and September 30, 2008, 1,085 comments were received by the Department. Although the majority of those comments addressed the law, 120 comments were specifically regarding the administrative rules. A summary of the comments received pertaining to the rules during the public comment period and a log of each comment received pertaining to the rules may be viewed on the Smokefree Air Act Web site, [www.iowasmokefreeair.gov/](http://www.iowasmokefreeair.gov/).

As a result of the comments received on the rules and additional internal review, the Department made the following changes to the Noticed rules:

The definition of "entrance" was amended and now reads as follows:

"*'Entrance'* means any doorway to an enclosed area used by the public or employees for ingress to any public place or place of employment, but does not include any doorway designated for use as an exit in an emergency only. 'Entrance' also includes the commonly understood points of entry to an outdoor area, subject to the prohibitions of this chapter, such as a driveway, sidewalk, pathway, access road, gate, or dedicated point of entry, but not including a street, road, highway, or sidewalk in the public right-of-way."

The definition of "grounds of any public building" was amended and now reads as follows:

"*'Grounds of any public building'* means an outdoor area of a public building that is used in connection with the building, including but not limited to a sidewalk or driveway immediately adjacent to the building, but not including a sidewalk in the public right-of-way; a sitting or standing area immediately adjacent to the building; a patio; a deck; a curtilage or courtyard; a swimming or wading pool; a beach; or any other outdoor area as designated by the person having custody or control of the public building. A person having custody or control of a public building may exclude from the designated grounds of any public building the following: a parking lot, the course of play at a golf course, a hiking trail, locations of an individual campsite or campfire, or a lake, river, or other body of water. Nothing in this definition prohibits any owner, operator, manager, or other person having custody or control of

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

an area that is exempt from the prohibitions of 2008 Iowa Acts, House File 2212, section 3, and rule 641—153.3(82GA, HF2212) from declaring the entire area or property a nonsmoking place.”

A definition of “public building” was added.

In 153.5(1), paragraph “e,” the size of vehicle signs was reduced from 24 square inches to 9 square inches.

In 153.8(5), the requirement that a person making a complaint include the person’s name and contact information was eliminated.

In 153.8(8), all references to “written notice of violation” were changed to read “written notice of potential violation.”

In 153.8(8), paragraph “c,” the description of actions taken subsequent to “third and subsequent complaints” was changed to be consistent with description of actions taken subsequent to second complaints.

These rules were adopted by the State Board of Health on November 12, 2008.

These rules shall become effective January 7, 2009, at which time the Adopted and Filed Emergency rules are hereby rescinded.

These rules are intended to implement 2008 Iowa Acts, House File 2212.

The following amendment is adopted.

Adopt the following new 641—Chapter 153:

CHAPTER 153  
SMOKEFREE AIR

**641—153.1(82GA, HF2212) Purpose and scope.** The purpose of these rules is to implement Iowa’s Smokefree Air Act, enacted to reduce the level of exposure by the general public and employees to environmental tobacco smoke in order to improve the public health of Iowans. These rules apply to public places, places of employment, and certain outdoor areas in the state.

**641—153.2(82GA, HF2212) Definitions.** For the purposes of this chapter, the following definitions shall apply:

“*Ashtray*” means any receptacle, including a can, bottle, bowl, tray, or other vessel that is used for extinguishing or disposing of any lighted cigar, cigarette, pipe, or other tobacco product in any manner or form including ash, cigarette butts or filters, or cigar stubs. However, “ashtray” shall not include any receptacle located outdoors and on the perimeter of any public place, the perimeter of the grounds of any public building, the perimeter of school grounds, or the perimeter of any other outdoor space subject to the prohibition in 2008 Iowa Acts, House File 2212, section 3, and rule 641—153.3(82GA, HF2212).

“*Bar*” means an establishment where one may purchase alcoholic beverages, as defined in Iowa Code section 123.3, for consumption on the premises and in which the serving of food is only incidental to the consumption of those beverages.

“*Child care facility*” means child care facility as defined by the department of human services pursuant to Iowa Code section 237A.1.

“*Child care home*” means child care home as defined by the department of human services pursuant to Iowa Code section 237A.1.

“*Department*” means the Iowa department of public health.

“*Entrance*” means any doorway to an enclosed area used by the public or employees for ingress to any public place or place of employment, but does not include any doorway designated for use as an exit in an emergency only. “Entrance” also includes the commonly understood points of entry to an outdoor area, subject to the prohibitions of this chapter, such as a driveway, sidewalk, pathway, access road, gate, or dedicated point of entry, but not including a street, road, highway, or sidewalk in the public right-of-way.

“*Gaming floor*” means gaming floor as defined by the state racing and gaming commission pursuant to Iowa Code section 99F.1.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

*“Grounds of any public building”* means an outdoor area of a public building that is used in connection with the building, including but not limited to a sidewalk or driveway immediately adjacent to the building, but not including a sidewalk in the public right-of-way; a sitting or standing area immediately adjacent to the building; a patio; a deck; a curtilage or courtyard; a swimming or wading pool; a beach; or any other outdoor area as designated by the person having custody or control of the public building. A person having custody or control of a public building may exclude from the designated grounds of any public building the following: a parking lot, the course of play at a golf course, a hiking trail, locations of an individual campsite or campfire, or a lake, river, or other body of water. Nothing in this definition prohibits any owner, operator, manager, or other person having custody or control of an area that is exempt from the prohibitions of 2008 Iowa Acts, House File 2212, section 3, and rule 641—153.3(82GA, HF2212) from declaring the entire area or property a nonsmoking place.

*“Hotel and motel”* means any building or structure equipped, used, advertised as, or held out to the public to be an inn, hotel, motel, motor inn, or place where sleeping accommodations are furnished for hire to transient guests.

*“Incidental to the sale of tobacco products”* means that the gross revenue of a retail tobacco store derived from the sale of products other than tobacco products is not more than 20 percent of the retail tobacco store’s total gross revenue.

*“Infiltrate”* means to permeate an area where smoking is prohibited by passing through a wall, ceiling, floor, window, door, or ventilation system to the extent that an individual can smell secondhand smoke.

*“Public and private educational facility”* means a public school and nonpublic school as defined in Iowa Code section 280.2, a community college as defined in Iowa Code section 260C.2, an accredited private institution as defined in Iowa Code section 261.9, and an institution governed by the board of regents pursuant to Iowa Code section 262.7.

*“Public building”* means an enclosed area owned, leased, or operated by or under the control of the state government or its political subdivisions.

*“Restaurant”* means eating establishments, including private and public school cafeterias, which offer food to the public, guests, or employees, including the kitchen and catering facilities in which food is prepared on the premises for serving elsewhere, and including a bar area within a restaurant.

*“Retail tobacco store”* means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is incidental to the sale of tobacco products.

*“Seating areas of outdoor sports arenas, stadiums, amphitheaters, or other entertainment venues”* means areas designated by the owner, operator, manager, or other person having custody or control of the area to be used primarily to witness entertainment events and shall include, but not be limited to, all chairs, seats, and bleachers whether permanent or temporary; standing room only; general admission or festival-style seating; and any other areas where individuals congregate to witness entertainment events.

*“Serving of food incidental to the consumption of alcoholic beverages”* means food preparation that is limited to the service of ice, prepackaged snack foods, popcorn, peanuts, and the reheating of commercially prepared foods that do not require assembly, such as frozen pizza, prepackaged sandwiches, or other prepackaged, ready-to-serve products.

*“Smoking cessation program”* means a course of treatment that is capable of clinical review for evidence-based outcomes that verify that individuals in the program stop smoking and that has been approved for coverage by a private or managed health care plan, Medicaid, Medicare, the Veterans Health Administration, or the United States military.

**641—153.3(82GA, HF2212) Prohibition of smoking.**

**153.3(1) Public places, places of employment.** Smoking is prohibited and a person shall not smoke in either of the following areas:

- a. Public places, as defined in 2008 Iowa Acts, House File 2212.
- b. All enclosed areas within places of employment including but not limited to work areas, private offices, conference and meeting rooms, classrooms, auditoriums, employee lounges and

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cafeterias, hallways, medical facilities, restrooms, elevators, stairways and stairwells, and vehicles owned, leased, or provided by the employer unless otherwise provided under these rules and 2008 Iowa Acts, House File 2212.

**153.3(2) Outdoor areas.** Smoking is prohibited and a person shall not smoke in or on any of the following outdoor areas:

*a.* The seating areas of outdoor sports arenas, stadiums, amphitheaters and other entertainment venues where members of the general public assemble to witness entertainment events.

*b.* Outdoor seating or serving areas of restaurants.

*c.* Public transit stations, platforms, and shelters under the authority of the state or its political subdivisions.

*d.* School grounds, including parking lots, athletic fields, playgrounds, tennis courts, and any other outdoor area under the control of a public or private educational facility, including inside any vehicle located on such school grounds.

*e.* The grounds of any public buildings owned, leased, or operated by or under the control of the state government or its political subdivisions, including the grounds of a private residence of any state employee any portion of which is open to the public with the following exceptions:

(1) This paragraph shall not apply to the Iowa state fairgrounds, or fairgrounds as defined in Iowa Code section 174.1.

(2) This paragraph shall not apply to institutions administered by the department of corrections, except that smoking on the grounds shall be limited to designated smoking areas.

(3) This paragraph shall not apply to facilities of the Iowa National Guard as defined in Iowa Code section 29A.1, except that smoking on the grounds shall be limited to designated smoking areas.

**641—153.4(82GA,HF2212) Areas where smoking not regulated.** Notwithstanding any provision of these rules and 2008 Iowa Acts, House File 2212, to the contrary, the following areas are exempt from the prohibitions of 2008 Iowa Acts, House File 2212, section 3:

**153.4(1)** Private residences, unless used as a child care facility, child care home, or a health care provider location.

**153.4(2)** Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided that not more than 20 percent of the rooms of a hotel or motel rented to guests are designated as smoking rooms, all smoking rooms on the same floor are contiguous, and smoke from smoking rooms does not infiltrate into areas in which smoking is otherwise prohibited under these rules. The status of smoking and nonsmoking rooms shall not be changed, except to provide additional nonsmoking rooms.

**153.4(3)** Retail tobacco stores, provided that smoke from these locations does not infiltrate into areas in which smoking is otherwise prohibited under these rules.

**153.4(4)** Private and semiprivate rooms in long-term care facilities, occupied by one or more individuals, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted, provided that smoke from these locations does not infiltrate into areas in which smoking is otherwise prohibited under these rules and 2008 Iowa Acts, House File 2212.

**153.4(5)** Private clubs that have no employees, except when being used for a function to which the general public is invited, provided that smoke from these locations does not infiltrate into areas in which smoking is otherwise prohibited under these rules and 2008 Iowa Acts, House File 2212. This exemption shall not apply to any entity that is established for the purpose of avoiding compliance with these rules and 2008 Iowa Acts, House File 2212.

**153.4(6)** Outdoor areas that are places of employment except those areas where smoking is prohibited pursuant to 2008 Iowa Acts, House File 2212, section 3, subsection 2.

**153.4(7)** Limousines under private hire; vehicles owned, leased, or provided by a private employer that are for the sole use of the driver and are not used by more than one person in the course of employment either as a driver or passenger; privately owned vehicles not otherwise defined as a place of employment or public place; and cabs of motor trucks or truck tractors if no nonsmoking employees are present.

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**153.4(8)** An enclosed area within a place of employment or public place that provides a smoking cessation program or a medical or scientific research or therapy program, if smoking is an integral part of the program.

**153.4(9)** Farm tractors, farm trucks, and implements of husbandry when being used for their intended purposes.

**153.4(10)** Only the gaming floor of premises licensed pursuant to Iowa Code chapter 99F exclusive of any bar or restaurant located within the gaming floor which is an enclosed area and subject to the prohibitions of 2008 Iowa Acts, House File 2212, section 3.

**153.4(11)** The Iowa veterans home.

**641—153.5(82GA, HF2212) Duties of employers, owners, operators, managers, and persons having custody or control of a public place, place of employment, area declared nonsmoking pursuant to 2008 Iowa Acts, House File 2212, section 5, or outdoor areas where smoking is prohibited.**

**153.5(1)** The employer, owner, operator, manager, or person having custody or control of a place where smoking is prohibited under 2008 Iowa Acts, House File 2212, shall:

*a.* Not permit smoking in a public place, place of employment, outdoor area where smoking is prohibited, or an area declared nonsmoking pursuant to 2008 Iowa Acts, House File 2212, section 5.

*b.* Inform all current employees and all prospective employees upon application for employment of the prohibitions of 2008 Iowa Acts, House File 2212.

*c.* Not retaliate against any employee, applicant for employment, or customer that exercises any rights under 2008 Iowa Acts, House File 2212, registers a complaint, or attempts to prosecute a violation of 2008 Iowa Acts, House File 2212.

*d.* Post signs in and at every entrance to the public place, place of employment, area declared nonsmoking, and outdoor area where smoking is prohibited that clearly and conspicuously inform persons that they are entering a no smoking facility or area.

(1) The signs shall be clear and conspicuous in or at the entrance where posted.

(2) The signs shall be at least 24 square inches in size (for example, 4 inches by 6 inches) and shall be in legible font type.

(3) The signs shall contain the words “No Smoking” or the international “no smoking” symbol; the telephone number for reporting complaints, 1-888-944-2247; and the department of public health Web site, [www.IowaSmokefreeAir.gov](http://www.IowaSmokefreeAir.gov).

*e.* Place no smoking signs in every vehicle that constitutes a public place, place of employment, or area declared nonsmoking pursuant to 2008 Iowa Acts, House File 2212, section 5.

(1) Such signs shall be clear and conspicuous from the exterior of the vehicle.

(2) The signs shall be at least 9 square inches (for example, 3 inches by 3 inches) and shall be in legible font type.

(3) The signs shall contain the words “No Smoking” or the international “no smoking” symbol; the telephone number for reporting complaints, 1-888-944-2247; and the department of public health Web site, [www.IowaSmokefreeAir.gov](http://www.IowaSmokefreeAir.gov).

(4) Nothing in this rule requires the placement of a sign in any vehicle that the director of the department of administrative services or the director of transportation orders to receive a regular registration plate pursuant to Iowa Code section 321.19.

*f.* Remove all ashtrays from areas where smoking is prohibited.

**153.5(2)** The owner or operator of a building or facility that contains more than one public place, place of employment, or area declared nonsmoking pursuant to 2008 Iowa Acts, House File 2212, section 5, which is controlled by other employers, owners, or operators shall comply with the provisions of subrule 153.5(1) for the area of the building or facility under the owner’s or operator’s control.

**153.5(3)** An employer, owner, or operator of a public place, place of employment or area declared nonsmoking pursuant to 2008 Iowa Acts, House File 2212, section 5, that is within a public place that is owned or operated by another person shall comply with the provisions of subrule 153.5(1) for the area under the control of the employer, owner, or operator within that public place.

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**153.5(4)** An employer, owner, operator, manager, or person having custody or control of a place where smoking is prohibited under 2008 Iowa Acts, House File 2212, shall inform any individual smoking in a place where smoking is prohibited that the individual is violating the smokefree air Act and shall request that the individual stop smoking immediately.

*a.* If the individual refuses to stop smoking, the employer, owner, operator, manager, or person having custody or control of the place where smoking is prohibited may discontinue service to that individual.

*b.* If the individual refuses to stop smoking, the employer, owner, operator, manager, or person having custody or control of the place where smoking is prohibited may request that the individual leave the area where smoking is prohibited.

*c.* If the individual refuses to leave the area where smoking is prohibited, the employer, owner, operator, manager, or person having custody or control of the place where smoking is prohibited may notify the state or local law enforcement agency with jurisdiction over the area where smoking is prohibited.

**641—153.6(82GA, HF2212) Duties of other state agencies and political subdivisions.** A state agency or political subdivision which inspects public places shall assess compliance with the requirements of these rules and 2008 Iowa Acts, House File 2212, during any inspection process and shall report any violations of 2008 Iowa Acts, House File 2212, to the department.

**641—153.7(82GA, HF2212) Leases.** Any lease entered into by the state or its political subdivisions on or after July 1, 2008, shall require that all areas where smoking is prohibited in 2008 Iowa Acts, House File 2212, section 3, comply with the provisions of 2008 Iowa Acts, House File 2212.

**641—153.8(82GA, HF2212) Complaints and enforcement.**

**153.8(1) Duties of department.** The department shall maintain a system for receiving and investigating complaints against persons who own, operate, manage, or otherwise have custody or control of a place where smoking is prohibited and who fail to comply with the provisions of 2008 Iowa Acts, House File 2212.

*a.* Pursuant to 2008 Iowa Acts, House File 2212, section 9, subsection 7, the department may designate one or more public agencies through a 28E agreement or other written contract to assist with the enforcement of 2008 Iowa Acts, House File 2212.

*b.* The department may refer complaints regarding a violation of 2008 Iowa Acts, House File 2212, to the law enforcement authorities of the state or of the political subdivision of the state in which the alleged violation occurred.

**153.8(2) Enforcement against a person who smokes in an area where smoking is prohibited.** Pursuant to 2008 Iowa Acts, House File 2212, section 9, subsection 7, the department designates the law enforcement authorities of the state and of each political subdivision of the state to assist with the enforcement of 2008 Iowa Acts, House File 2212. A peace officer may issue a citation in lieu of arrest pursuant to Iowa Code chapter 805 against a person who smokes in an area where smoking is prohibited pursuant to 2008 Iowa Acts, House File 2212, and such person shall pay a civil penalty pursuant to Iowa Code section 805.8C(3)“a” for each violation.

**153.8(3) Enforcement against a person who owns, operates, manages, or otherwise has control of a place where smoking is prohibited.** Pursuant to 2008 Iowa Acts, House File 2212, section 9, subsection 7, the department designates the law enforcement authorities of the state and of each political subdivision of the state to assist with the enforcement of 2008 Iowa Acts, House File 2212. The department or its designee may initiate a civil action against an owner, operator, manager, or person who otherwise has custody or control of a place where smoking is prohibited pursuant to 2008 Iowa Acts, House File 2212, and such person shall pay the applicable civil penalty pursuant to 2008 Iowa Acts, House File 2212, section 9.

**153.8(4) Manner of filing a complaint.** Any person may register a complaint with the department by calling the toll-free number, 1-888-944-2247, or registering a complaint on the department’s Web site,

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[www.IowaSmokefreeAir.gov](http://www.IowaSmokefreeAir.gov), or downloading a complaint form from the department's Web site and mailing the complaint form to the department at Department of Public Health, Division of Tobacco Use Prevention and Control, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319.

**153.8(5) *Contents of the complaint.*** A complaint filed with the department shall include:

- a. The name or location of the public place, place of employment, area declared a nonsmoking place pursuant to 2008 Iowa Acts, House File 2212, section 5, or outdoor area where smoking is prohibited which is the subject of the complaint;
- b. A description of the occurrence that prompted the complaint; and
- c. Any other information relevant to the occurrence.

**153.8(6) *Review of complaint by department.*** Upon receipt of a complaint, the department or its designee may contact the individual making the complaint to confirm the details of the complaint and obtain any additional information.

**153.8(7) *Information from inspections.*** Information received by the department pursuant to rule 641—153.6(82GA, HF2212) of one or more violations of 2008 Iowa Acts, House File 2212, as a result of an inspection of a public place by the state or political subdivision of the state shall be considered a credible complaint under this rule.

**153.8(8) *Notice of potential violation.*** If the department determines that a complaint against a public place, place of employment, area declared nonsmoking pursuant to 2008 Iowa Acts, House File 2212, section 5, or outdoor areas where smoking is prohibited is credible, the department shall:

- a. For the first complaint.
  - (1) Issue a written notice of potential violation to the owner, operator or person having custody or control including the details of the complaint.
  - (2) The notice shall include educational materials about how to comply with 2008 Iowa Acts, House File 2212, and information on whom to contact for further information and assistance for compliance.
- b. For the second complaint in one year.
  - (1) Issue a second notice of potential violation to the owner, operator, or person having custody or control.
  - (2) In addition, the department may authorize one or more public agencies to conduct a compliance check of the location.
  - (3) In addition, the department may pursue the civil penalties provided for in 2008 Iowa Acts, House File 2212, section 9, subsection 2; may refer the complaint to the appropriate authority for enforcement of the civil penalties provided for in 2008 Iowa Acts, House File 2212, section 9, subsection 2; or may pursue any other remedy authorized by 2008 Iowa Acts, House File 2212.
- c. For the third and subsequent complaints of a potential violation within one year.
  - (1) Issue a subsequent notice of potential violation to the owner, operator, or person having custody or control.
  - (2) In addition, the department may authorize one or more public agencies to conduct a compliance check of the location.
  - (3) In addition, the department may pursue the civil penalties provided for in 2008 Iowa Acts, House File 2212, section 9, subsection 2; may refer the complaint to the appropriate authority for enforcement of the civil penalties provided for in 2008 Iowa Acts, House File 2212, section 9, subsection 2; or may pursue any other remedy authorized by 2008 Iowa Acts, House File 2212.

**641—153.9(82GA, HF2212) Limitation of rules.** Nothing in these rules is intended to limit any other state administrative rule or federal regulation that prohibits smoking.

These rules are intended to implement 2008 Iowa Acts, House File 2212.

[Filed 11/12/08, effective 1/7/09]

[Published 12/3/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/3/08.

**ARC 7383B****REVENUE DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code chapter 17A and section 421.14, the Department of Revenue hereby amends Chapter 12, “Filing Returns, Payment of Tax, Penalty and Interest,” Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXXI, No. 8, p. 901 on October 8, 2008, as **ARC 7256B**.

The adopted amendment adds new rule 701—12.10(423) pertaining to the statute of limitations on sales and use tax transactions involving the furnishing of lawn care, landscaping, and tree trimming and removal services which occurred more than five years prior to the date of an audit.

This amendment is identical to that published under Notice of Intended Action.

This amendment will become effective January 7, 2009, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

This amendment is intended to implement Iowa Code section 423.31 as amended by 2008 Iowa Acts, Senate File 2428, section 23.

The following amendment is adopted.

Adopt the following new rule 701—12.10(423):

**701—12.10(423) Audit limitation for certain services.**

**12.10(1) Definitions.** For purposes of this rule, the following definitions shall govern:

“*Landscaping*” means the same as defined in rule 701—26.61(423).

“*Lawn care*” means the same as defined in rule 701—26.61(423).

“*Tree trimming and removal*” means the same as defined in rule 701—26.66(423).

**12.10(2) Audit limitation for lawn care, landscaping, and tree trimming and removal services.** Notwithstanding any other provision of the Iowa Code to the contrary, the department shall not attempt to collect delinquent sales tax or use tax on a transaction involving the furnishing of lawn care, landscaping, or tree trimming and removal services which occurred more than five years prior to the date of an audit. The date an audit will begin is when the department presents notification that the person is being contacted for an audit.

This rule is intended to implement Iowa Code section 423.31 as amended by 2008 Iowa Acts, Senate File 2428, section 23.

[Filed 11/12/08, effective 1/7/09]

[Published 12/3/08]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/3/08.

**ARC 7382B****REVENUE DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code chapter 17A and sections 421.17, 437A.25, 476C.7, and 476D.4, the Department of Revenue hereby adopts amendments to Chapter 70, “Replacement Tax and Statewide Property Tax,” and Chapter 80, “Property Tax Credits and Exemptions,” Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXXI, No. 8, p. 902, on October 8, 2008, as **ARC 7255B**.

Item 1 amends subrule 70.12(1) to provide wind energy tax credits that may be applied against the replacement tax due for electric companies. Item 1 also amends subrule 70.12(2) to extend by one year



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the period of time for electric companies to claim a reimbursement of replacement tax paid for using soy-based transformer fluid in their operation.

Item 2 amends rule 701—80.5(427) to provide property tax exemptions on buildings and land used for speculative shell building purposes.

Item 3 amends rule 701—80.26(427) to provide property tax exemptions for web search portal businesses.

Item 4 amends 701—Chapter 80 by adding a new rule that requires privately owned libraries and art galleries to file a claim for property tax exemption.

These amendments are identical to those published under Notice of Intended Action.

These amendments will become effective January 7, 2009, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code Supplement section 427.1 as amended by 2008 Iowa Acts, House File 2233, section 2; Supplement section 427.1(7) as amended by 2008 Iowa Acts, Senate File 2400; Supplement section 427.1(27) as amended by 2008 Iowa Acts, Senate File 2419; Supplement section 427.1(35); section 437A.17B as amended by 2008 Iowa Acts, Senate File 2405; section 437A.17C as amended by 2008 Iowa Acts, Senate File 572; chapter 476B as amended by 2008 Iowa Acts, Senate File 2405; and chapter 476D as amended by 2008 Iowa Acts, Senate File 572.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [70.12, 80.5, 80.26, 80.27] is being omitted. These amendments are identical to those published under Notice as **ARC 7255B**, IAB 10/8/08.

[Filed 11/12/08, effective 1/7/09]

[Published 12/3/08]

[For replacement pages for IAC, see IAC Supplement 12/3/08.]

**ARC 7384B**

**REVENUE DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code chapter 17A and section 421.14, the Department of Revenue hereby amends Chapter 230, "Exemptions Primarily Benefiting Manufacturers and Other Persons Engaged in Processing," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXXI, No. 8, p. 906 on October 8, 2008, as **ARC 7259B**.

The adopted amendment adds new rule 701—230.11(423) to implement Iowa Code Supplement section 423.3 as amended by 2008 Iowa Acts, House File 2233, section 1. Rule 701—230.11(423) provides a new exemption from sales and use tax on purchases made of specified property and services by a qualifying entity whose business, among other businesses, is as a web search portal business.

This amendment is identical to that published under Notice of Intended Action.

This amendment will become effective January 7, 2009, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

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This amendment is intended to implement Iowa Code section 423.3 as amended by 2008 Iowa Acts, House File 2233, section 1.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this amendment [230.11] is being omitted. This amendment is identical to that published under Notice as **ARC 7259B**, IAB 10/8/08.

[Filed 11/12/08, effective 1/7/09]

[Published 12/3/08]

[For replacement pages for IAC, see IAC Supplement 12/3/08.]